PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES

Mr. HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 117 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 117

Resolved, That it shall be in order at any time on Wednesday, April 23, 1997, or on Thursday, April 24, 1997, for the Speaker to entertain motions that the House suspend the rules. The object of any motion to suspend the rules shall be announced from the floor at least one hour prior to its consideration. The Speaker or his designee shall consult with the minority leader or his designee on the designation of any matter for consideration pursuant to this resolution.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). The gentleman from Washington [Mr. HASTINGS] is recognized for 1 hour.

Mr. HASTINGS of Washington. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York [Ms. SLAUGHTER], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. HASTINGS of Washington asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Washington. Mr. Speaker, this rule makes it in order at any time today, Wednesday April 23, or tomorrow, Thursday, April 24, for the Speaker to entertain motions that the House suspend the rules. The rule also provides that the object of any motion to suspend the rules shall be announced from the floor at least 1 hour prior to its consideration. The rule further considers the Speaker or his designee to consult with the minority leader or his designee on the designation of any matter for consideration pursuant to this resolution.

The bills that will be considered under suspension of the rules as a result of adopting this rule are noncontroversial and are very narrowly tailored, thus making it impractical to bring them up under an order of business resolution from our Committee on Rules. However, scheduling them for consideration today is necessary to ensure that our colleagues are here to do the very important committee work.

For example, Mr. Speaker, the Committee on Banking and Financial Services is meeting today to mark up the Housing Opportunity and Responsibility Act. In addition, the Committee on Ways and Means is meeting today to mark up two very important pieces of legislation, the Adoption Promotion Act and the Welfare Reform Technical Corrections Act. Finally, the Committee on International Relations is marking up several timely measures relating to Zaire and Cambodia.

Mr. Speaker, a number of our colleagues have expressed concern about the pace in which this body has conducted its business during the first months of this session. To those Members, I would simply say that today's resolution makes it possible to keep moving ahead expeditiously on the important business the American people have sent us here to do.

This is clearly a straightforward and noncontroversial rule. I would hope my colleagues here will debate it with their customary civility and pass it on without delay.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank my colleague for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

While I do not oppose the rule, I would like to use the opportunity to again raise the issue of why the majority still has yet to propose a budget and has yet to hold any hearings or markups on campaign finance reform. Fifty-eight bills have already been introduced in the House this year that would reform our campaign finance system, one of which is my own measure to provide free television time to political candidates. Yet all 58 of these campaign finance reform bills continue to languish in committee. There is no excuse for this Congress' continuing failure to take action on these issues. The leadership of the House owes it to the voters of the Nation to seize the opportunity before it and to enact responsible reform. While I support this rule allowing us to move suspension measures forward this week, I would urge our leadership and my colleagues to also move forward on some of the more difficult and pressing matters before us. I am at a loss to explain to my constituents why the House has spent so little time in session this year while so much major legislation has yet to see the light of day. Let us get on with the budget process and move forward with real campaign finance reform.

Mr. Speaker, I yield back the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

ANNOUNCEMENT REGARDING LEGISLATION TO BE CONSIDERED UNDER SUSPENSION OF THE RULES TODAY

Mr. HASTINGS of Washington. Mr. Speaker, pursuant to the rule, the following suspensions will be considered today:

House Concurrent Resolution 8, H.R. 39, H.R. 449, H.R. 688, and H.R. 1272.

21ST CENTURY PATENT SYSTEM IMPROVEMENT ACT

The SPEAKER pro tempore. Pursuant to House Resolution 116 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 400.

□ 1425

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 400) to amend title 35, United States Code, with respect to patents, and for other purposes, with Mr. HASTINGS of Washington (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on Thursday, April 17, 1997, the amendment in the nature of a substitute offered by the gentleman from California [Mr. ROHRABACHER] had been disposed of and the bill was open for amendment at any point.

Are there further amendments to the bill?

AMENDMENT NO. 1 OFFERED BY MR. CAMPBELL

Mr. CAMPBELL. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. CAMPBELL: amend section 302(C)(2), p. 68 of March 20 text: Strike lines 4–6.

Insert: ''under this chapter, and such use shall not be greater in quantity, volume, or scope than had been the actual quantity, volume, or scope of the prior use, however, the defense shall also extend to improvements in''

Amend section 302(C)(6), p. 69 of March 20 text:

At line 23, strike ',' add: '; in which case the use of the defense shall not be greater in quantity, volume, or scope than had been the actual quantity, volume, or scope of the prior use.''

Mr. CAMPBELL. Mr. Chairman, I begin today with a word of thanks to my good friend and colleague, the gentleman from California [Mr. ROHRABACHER], on whose side I fought last week, and to my good friend and colleague, the gentleman from North Carolina [Mr. COBLE], the chairman. This is a different subject from last week. It is an amendment that deals with the prior domestic use. I would just like to take a moment and explain it.

This bill does something that has never before happened in American patent law. What it says is that where a prior user of a patented idea has made commercial use of that idea in the United States, then—even though the inventor files the patent on time and even eventually gets the patent—that inventor has no opportunity to get royalties from that prior domestic user. Now, that messes up the whole system. The idea is to reward the inventor, the person who comes up with the idea first, and who goes and gets it patented.

If instead you have to look around and wonder if somebody else anywhere

in the country is engaged in the prior domestic use, you run the risk that when the patent eventually is awarded to you it will have very little value, very little value because some other company has already got it and the right to continue producing it.

This is a problem that might be limited, and I was offering an amendment to my good friend the chairman of the committee, which regrettably he was not able to accept. I do wish to put on the Record, by the way, that he accepted many other amendments of mine, for which I am very grateful. So this has been a cooperative process, but he was not able to accept this one.

What I suggested was, look, let us limit this prior domestic user to the kind and volume of that prior use. If you are an innocent prior domestic user, okay, continue. But you should not be able to double it, to triple it, increase it tenfold after somebody else has the patent. Particularly I am worried that if you sell your company, you should not be put in the position where the acquirer is bidding more for the company because it has the crown jewel of being able to do what, under existing law, would be a violation of patent.

So I propose today on the floor exactly the amendment I offered to the chairman, and I am going to take just a moment further and explain it. It says, go ahead, I understand the occasional need for a prior domestic user to continue, but it will be limited in quantity, volume, and scope to the actual quantity, volume, and scope that you were producing before; and, if you are acquired, that the acquirer, in taking over the full company, also not expand that use in scope or quantity or volume. Obviously the Patent Office has the right to issue regulations that will be relevant for explaining and applying this exception.

Where did I come up with this? This is a model in labor law about the opportunities and obligations to continue bargaining when an employer is taken over by another. The legal rules for changes in scope when there is a change in ownership are well known in existing law. I hope this is clear, and I offer this as an amendment that will improve the Coble bill that we are voting on later today. It will not defeat the other provisions of the bill. It is not inconsistent with it in my view.

Since last week, one additional piece of testimony has come to my attention, Mr. Chairman, and that is from Robert Rines, the president of the Academy of Applied Science. He wrote the following in a letter dated April 22:

> I also know firsthand that staff at MIT, where I teach, Stanford, Carnegie and Harvard, at least, are particularly upset with the prior secret user provision, which is certainly of no value to universities and which if passed will be used to deprecate their patents.

The importance of this is underlined by the fact that the major research universities have an interest in creating innovation and not having the value of it taken away because some prior domestic user making, let us say, 10 units can now make 100. That is it. I believe the amendment is simple, and I would urge my colleagues to support it.

Mr. COBLE. Mr. Chairman, I rise in opposition to the amendment.

I thank the gentleman from California. As he indicated, Mr. Chairman, we have been pretty easy dogs to hunt with. As the gentleman said, we have compromised, we gave away a lot. I do not think we compromised the bill in doing so, but we worked very favorably with many people who came to us.

□ 1430

The amendment made in order by my colleague would seriously undermine the effectiveness of title III of H.R. 400, however, which protects prior American users of patented technologies. The amendment would apply limitations on expansion of activities by the prior user and by any company to which the prior user might wish to transfer its business.

The first part of this amendment is unclear to me as to exactly what type of limit would be placed upon a prior user. By limiting the quantity and volume to the, quote, actual quantity, volume or scope, close quote, of the prior use, the question is prior to what? Prior to the date of filing of an application covering an invention which is the subject of the prior use? Prior to the date of issuance on such a patent? Prior to the date the prior user is sued by the patent holder? It is very nebulous.

Irrespective of the actual meaning of the first part of this amendment, Mr. Chairman, it would at least significantly erode the benefit of the prior user right to American manufacturers, leaving them at a serious disadvantage vis-a-vis European and Japanese patent holders. All of our major trading partners have prior use defenses in their laws now. Thus, while foreign firms could use their U.S. patents to effectively disrupt the U.S. manufacturing and production facilities of American companies, the manufacturing operations of these foreign firms would remain immune from attack on the basis of patents obtained in their countries by their U.S. competitors. Such serious limitation on the prior use defense would place enormous pressure on enterprises, large and small, to seek to patent every advance which formed part of their production technology to avoid disruptions from patents by subsequent inventors.

The second part of the amendment, in addition to suffering the same infirmities of clarity, would be extremely prejudicial to start-up firms and small businesses which are frequently acquired by larger firms. A small business concern enjoying a prior use right, which it cannot transfer to a perspective purchaser, will be considerably less valuable to such a purchaser, depriving the individuals who created the small business in the first place of the just returns for their endeavors.

For those reasons and others, Mr. Chairman, I oppose the amendment offered by the gentleman from California [Mr. CAMPBELL].

Mr. DELAHUNT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the ranking member and I and other Democratic members of the subcommittee oppose this amendment. It forbids a technology-based business to grow its operations if the benefits are from a prior use defense. It would also freeze the level of activity benefiting from a prior use defense when a business was sold. This would especially harm small firms selling their businesses. The amendment limits the protection for prior uses to use that is no greater in quantity, volume or scope than the use that occurred before a somewhat unclear point in time. The limitation applies both to any expansion in quantity, volume or scope by another company to which the prior user may wish to transfer its business.

The practical effect of this limitation would be to discourage any growth or improvement in businesses that title III is intended to protect. The limitation also would discourage any transfer of a line of business to another firm that might be more efficient and competitive.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. DELAHUNT. Mr. Chairman, I yield the balance of my time to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I just wanted a quick comment. The chairman has received a letter. Mr. Lehman, our Commissioner of Patents and Trademarks, has written to the chairman on this issue, and I want to quote him. He in his letter dated April 22 indicates that, and I quote:

> H.R. 400 contains provisions referred to as prior use rights that are intended to make the patent system fairer by allowing those who practice an invention before it was patented by another to continue to practice invention after the patent issued.

According to Mr. Lehman, and again this is a quote:

> Mr. CAMPBELL's amendment is unfair in limiting their rights to exploit the invention to the quantity or volume of use at the time of the prior use. In some instances they may have reasonably expected to expand operations at a later time and others that may be tantamount to eliminating the prior use right.

That is Mr. Lehman's comment.

Mr. CAMPBELL. Mr. Chairman, would the gentleman yield?

Mr. DELAHUNT. I yield to the gentleman from California.

Mr. CAMPBELL. Would the gentleman kindly request the gentlewoman to share that copy with me, in that I have not seen it until this moment?

Ms. LOFGREN. Mr. Chairman, if the gentleman will yield, I am sorry. Of course. Since it was sent to the gentleman from North Carolina [Mr.

COBLE] I assumed, but I would be happy to, when we go back into the House of Representatives, I will ask unanimous consent that the letter be submitted in the RECORD. In the meanwhile I will make a copy for the gentleman.

Mr. CAMPBELL. If the gentlewoman from California can just bring it over to me, that way I can see it on my rebuttal.

The letter referred to is as follows:

U.S. DEPARTMENT OF COMMERCE,
PATENT AND TRADEMARK OFFICE,
Washington, DC, April 22, 1997.

Hon. HOWARD COBLE,
Chairman, Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your request to review proposed amendments to H.R. 400, the ''21st Century Patent System Improvement Act.'' We oppose enactment of any of these proposed amendments and amendments that may be presented containing the same subject matter.

One amendment offered by Mr. Hunter would amend provisions of H.R. 400 related to patent reexamination—a proceeding that offers a cost-effective alternative to litigation. As changed by the Manager's Amendment, title V of H.R. 400 would improve the existing procedures by permitting those who question patent validity (other than the patent owner) to participate more effectively in reexamination proceedings. This makes reexamination a more effective alternative to expensive and time-consuming litigation. This amendment would eliminate this improvement and all others contained in H.R. 400. Furthermore, it would preclude the primary examiner who authorized the issuance of the patent, the person in the Patent and Trademark Office most familiar with the patent and the technology involved in it, from participating in the reexamination of the patent.

Another proposed amendment offered by Mr. Hunter would retain the provisions as amended by the Manager's Amendment but would change them in such a way as to render reexamination proceedings as almost useless. Under the provisions of this amendment, reexamination proceedings could only be instituted within nine months of the date of issue of the patent. In many or most cases, disputes involving the validity of the patent will not be apparent within the first nine months after issue. Thus, reexamination will not be a viable substitute for litigation in many instances and patent owners and third parties will be forced to engage in litigation that is more costly and time consuming. While this would be a disadvantage for all businesses, this could be especially disadvantageous for individual inventors and small businesses. It is ironic that this amendment is claimed to have been offered on their behalf.

An amendment offered by Mr. Forbes would preclude pre-grant publication of a patent application filed by small business or individual inventors (as defined in the fee subsidy provisions of title 35), unless requested by the applicant. The public benefits from prompt publication of patent applications. There appears to be no reason to exempt some applicants from the publication requirement, especially when any possible legitimate concerns about losing the opportunity to use trade secrets are mitigated by the bill under consideration. It provides that these applicants can request delays in publication until after the second office action.

H.R. 400 contains provisions, referred to as ''prior user rights,'' that are intended to make their patent system fairer by allowing those who practiced an invention before it was patented by another to continue to practice invention after the patent issued. Mr. Campbell's amendment us unfair in limiting their rights to exploit the invention to the ''quantity or volume of use'' at the time of the prior use. In some instances, they may have reasonably expected to expand operations at a later time. In others, it may be tantamount to eliminating the prior user right.

Each of these proposed amendments would make it more difficult for all businesses, but especially small businesses or individual inventor, to exploit their inventions successfully. Therefore, we oppose their enactment.

Furthermore, during the debate on H.R. 400, some Members cited a report released by the Congressional Research Service that concluded that H.R. 811 would end the practice of ''submarine patents''. This conclusion in it is incorrect. H.R. 811 would permit publication at a late point in patent prosecution (unlike H.R. 400 that requires early publication) and permits the term to run from the date of issue (unlike H.R. 400 that requires the term to run from the date of filing). This means that the public would not receive notice of the ''submarine'' patent until the five-year date. Although this could be earlier than they would under the law before the enactment of the Uruguay Round Amendments Act, the public still could have invested substantial amounts unknowingly in the technology covered by the submarine patent. Worse, given the term provisions, the beginning of the patent term can still be unjustifiably delayed so that it appears that the submariner is obtaining a longer patent term than authorized. Thus, the public may then know about the patent application pending in the Office, but they cannot stop the delay tactics or the unfair extension of the patent term.

Sincerely,

BRUCE A. LEHMAN,
Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Mr. DELAHUNT. Mr. Chairman, I yield back the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was very pleased that the gentlewoman from California [Ms. LOFGREN] brought up Bruce Lehman, the head of our Patent Office. He is the one who actually made an agreement that has brought us all together today. It was his agreement with the Japanese, which I put into the CONGRESSIONAL RECORD on numerous occasions which the other side of this debate has yet to comment on, that has brought us together, because Mr. Lehman signed an agreement to harmonize American patent law with that of the Japanese. That is the reason we are here today.

America had the strongest patent law in the world. That is the reason we had our great innovations that mankind has enjoyed over these last 200 years coming from the United States of America.

This is an attempt, what is happening today, H.R. 400, to destroy the fundamental legal protections that have been part of our legal system since the adoption of our Constitution and in the name of harmonizing our law with that of Japan.

Last week, when we had this discussion as to basically our substitute amendment, all of this, quote, reform was being done to stop submarine patenting, supposedly. Well, those who were listening realized that argument did not wash. Well, what was the real reason we have the bill here? Why is there a portion of this bill that demands that every American inventor will have to have his invention published for everybody in the world to see and to steal before that patent is issued? That is part of the bill because that is the way the Japanese system works. That is what we have agreed to in a subterranean agreement with the Japanese.

This bill will gut America's patent system. It is horrendous. It will make us technologically inferior one generation from now. I ask my colleagues to defeat it.

Mr. Chairman, I yield the balance of my time to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Chairman, there were three points made in opposition to my amendment. I would like to rebut each of them. First of all, prior domestic use; it has been asked: Prior to what? The answer is already in the bill. Remember the bill itself creates the prior domestic use as a right. Accordingly, I am saying whatever that prior domestic use is, it shall be limited to its scope as of the time of the prior domestic use recognized by the bill. So it really is a circular argument against my amendment.

Second, opponents of my amendment argue that this is a disadvantage for America in regard to Europe because Europe has a prior domestic use provision. This is the debate we had last week.

If a European files over here, the European's prior domestic use does not give an excuse to violate American patent law. Everyone over here is treated the same. Over in Europe, whether an American or a European files, there is a prior domestic use exception. So there is a no unfairness between the two; we have a better system. In America the patent means more, and that should be protected.

And, last, opponents argue that small businesses are somehow disadvantaged. I have now had the opportunity to read Mr. Lehman's letter. He claims small inventors are disadvantaged—but what he says is disadvantaged as opposed to what the amendment would provide instead of the bill, not disadvantaged as compared to the status quo. There is no prior domestic commercial use in the status quo.

Now if my colleagues wish to create a prior domestic use exception, I am limiting it so that it is not expanded so broad as to take away the value of the right. And that is my intention. But please, to say that it limits the small businesses is really quite erroneous because small businesses do not have this right presently.

Last, if you want to generalize, understand it is the large businesses who

are more likely engaged in the prior domestic commercial use. It is the small businesses who, if you want to generalize, are the inventors, the larger businesses who are the commercializers.

This one provision shows as clearly as any in the bill that it is an attempt to take from the inventor and give to the commercializer, and we do that at great risk to the inventing process.

I thank my colleague for yielding.

Mr. ROHRABACHER. It is fascinating that in H.R. 400, which we will vote on as an up-and-down vote at the end of this long debate and after our amendments are through, that all of the Nobel Laureates that have been cited on the floor have been in favor of a substitute to H.R. 400 and have opposed H.R. 400; the research departments of our major universities and colleges are opposed to H.R. 400; every inventors' organization in the country is opposed to H.R. 400; small businesses throughout our country are opposed to H.R. 400.

They do not want to give huge, multinational, and foreign corporations every secret that they have been developing with their research and their efforts over the years, even before patents are granted to those who have applied for patents.

This would make vulnerable small businessmen. It would make vulnerable our inventors. It would cut into what America has had as our edge against every one of our foreign adversaries both in terms of national security and in terms of our prosperity.

I am asking my colleagues to join me in voting no on H.R. 400 but supporting the amendment of the gentleman from California [Mr. CAMPBELL] which would, hopefully, improve it one little bit.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words. I just have a very brief statement I want to make.

I want to say to my friend, the gentleman from California [Mr. ROHRABACHER]: First, I disagree with him comprehensively in his interpretation of the bill; second, a local Capitol Hill-newspaper has quoted me according to some anonymous source, as referring to him with a highly uncomplimentary name. I would like the public record to show that I hold him in the highest regard, I hold him in the highest esteem, in the highest respect, and that I disavow such terms and dislike personalizing any disputes.

I hope the gentleman does not put any credence in that published statement because that would be wrong. But again, I reiterate my comprehensive disagreement with the gentleman.

Publication is protection. Yes, it is published. Yes, people can read it. But you have provisional rights as though you had a patent issued. What the publication does is say, yes, this is my idea, I was here first, do not tread on me. And it is that publication of foreign applications for patents that we would like to see, inasmuch as they see ours when we file over there.

But notwithstanding that, that is not the real thrust of my remarks. The thrust of my remarks is to say that the gentleman is persistent and tenacious and a very worthy adversary; and I hope the misstatements in the press have not colored the gentleman's view of my opinion of him, which is of the highest.

Ms. KAPTUR. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Chairman, I thank the gentlewoman for yielding.

First of all, I would like to say that this has been a heated debate and it has been a bipartisan debate; and no one can really chart who is going to fall down on what side of this debate in terms of their party or whether they are conservative or liberal or what have you.

I think that is healthy for this body. And I certainly never believed that my colleague, the gentleman from Illinois [Mr. HYDE] would have personalized it the way the newspaper said it was. After all, it was a comment not about me but about my mother I seem to think. And I am sure that comment would not really have been something that would be characteristic of the gentleman from Illinois [Mr. HYDE], who has always kept debates on a very high plain, even though sometimes being called Mr. Periscope is not always the nicest thing in the world, but I did not take offense at that either.

Mr. HYDE. Mr. Chairman, if the gentlewoman would yield, the gentleman's periscope is always up.

Mr. ROHRABACHER. But I have nothing but respect for the gentleman from North Carolina [Mr. COBLE] and the gentleman from Illinois [Mr. HYDE].

As I say, if one would examine our voting records, one would find that we vote together 90 percent of the time. Again, however, in this particular instance, I am in strong disagreement with my two colleagues. And I am happy that we are discussing publication, because I believe publication is the essential ingredient of H.R. 400.

□ 1445

How one might determine this, whoever is listening from the outside or reading the CONGRESSIONAL RECORD or our colleagues listening from their offices, is that this bill was actually submitted to Congress during the last session. The bill was virtually the same bill, but it had a different title on the bill. The title of the bill in the last Congress was the Patent Publication Act.

The reason it was called the Patent Publication Act is because the purpose of the bill, and the essential purpose, the essential thing that it accomplishes that could not be accomplished with other minor reforms, or actually things that could happen, reforms within the Patent Office itself, the publication is the thing that by necessity takes some congressional action.

Why is publication bad? It is common sense. Those people who are listening, those people who are reading the CONGRESSIONAL RECORD, our colleagues who are listening at home, if one cannot understand the argument that was just presented to us of why publishing our secret information, information that by American tradition was kept absolutely confidential until the issuance of a patent, from the time our Constitution was adopted until after this bill passes and is signed into law, the law has been that an American has a right of confidentiality. If he has an invention and applies for a patent, no one will have the right to know about it until that patent is issued.

This is a major divergence of American law in a fundamental area. We are talking about the law that has governed technological development in our country. It has served us well. America's competitors did not know what American inventors, innovators, and universities were doing until the patent was issued. This bill would mandate after 18 months that all of the information of an applicant would be made public even before the patent is issued.

Sometimes patents take 5 and 10 years to issue. In that case, America's worst adversaries, people who want to destroy this country economically and bring us down, will have all of our technological secrets to use against us. The bill takes care of that, we are told, because it grants then, the innovator, the inventor, the right to sue these huge foreign and multinational corporations who might infringe upon us.

That will not work. It does not fool the inventors. It is a formula for a catastrophe and the stealing of our technology to be used against us.

I ask for people to vote no on H.R. 400.

Ms. KAPTUR. Mr. Chairman, I yield the balance of my time to the gentleman from California [Mr. CAMPBELL].

Mr. HYDE. Mr. Chairman, will the gentlewoman from Ohio yield?

Mr. CAMPBELL. Mr. Chairman, if the gentleman from Illinois [Mr. HYDE] will get us some more time.

Mr. HYDE. Mr. Chairman, I ask unanimous consent that the gentlewoman from Ohio have an additional minute.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HYDE. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, this is just kind of a passing comment. The gentleman from California [Mr. ROHRABACHER] talked about countries that wanted to destroy us economically. I searched the globe, and I see all

of these countries wanting to trade with us. They like our markets. They do not really want to destroy us economically. They would like to get an advantage, but destruction, I do not think that is part of their agenda.

Mr. CAMPBELL. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, if I could please get attention to my amendment. It has nothing to do with disclosure. My amendment has something to do with the prior user opportunity to undermine the patent. Here is what it is.

The bill itself says something that has never existed before in American patent law. At it is now in patent law, if one who was making a product prior to you, but does not obtain the patent, and you do—they have to pay you royalties. That is valuable. It is a way to make people go to the Patent Office and get their idea patented.

Under this bill, for the first time in American patent law, that prior domestic user gets to continue—with no obligation to pay royalties, and worse, the right to expand, and sell the company and sell this right along with the company, with the result that it really takes away a significant percentage of the value of having a patent.

So what I propose is this: I understand that there will occasionally be a prior innocent commercial user. Let him, let her continue—that is all right—but only with the scope and volume that that person was doing. Do not allow it to be a back door to expand so much as to take away the essential patent right.

I think that is a very reasonable amendment. We had discussion on this as an amendment, and I think it improves the bill. I thank my colleagues from Ohio.

Mr. HUNTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I thank the gentleman for staying around to answer a few questions on his amendment. I just want to ask a couple of questions. Let me walk through this thing and make sure I get the right and accurate picture of what his amendment does.

This has to do with prior use of a certain technology, and that means presumably, if one has a company that has been using technology, let us say they have kept it as a trade secret so other people do not know what it is, and they end up obtaining a patent for that particular technology, that the prior user, the corporation, can continue to use the technology without having to pay. But if they expand their activity beyond the scope that existed at the time the patent issued for the inventor over here, then they have to pay for the delta, the difference between their present activity and their expanded activity, using what is now patented technology.

Is that an accurate description?

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, it is almost accurate; there is just one point where it was not, and that is that the expansion is of the use beyond the prior domestic use. At one point my colleague substituted the word ''patent'' for ''use,'' but I think he has said it absolutely accurately otherwise.

Here it is: Under existing patent law, the prior domestic user has to pay royalties to the person who gets the patent. This bill says that prior domestic user who might have kept it secret can expand to his heart's content. My amendment says, no, look, if you have a prior domestic use, that is what you can continue doing; but if you expand it beyond that, then you have to deal with the fellow who has the patent.

Mr. HUNTER. Mr. Chairman, I thank the gentleman for his explanation.

Mr. CAMPBELL. Mr. Chairman, if the gentleman would yield further, I want to just take one moment to read the provision in the bill which I would amend. Again, I say to my colleagues, this has nothing to do with publication; it has to do with an exemption never before existing in American patent law. It says, I am quoting from the bill, title III: ''except that the defense shall also extend to variations in the quantity or volume of use of the claimed subject matter.''

I take that out, and I say, if you have a prior use, okay, continue it, just do not expand it. I thank the gentleman for yielding.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. CAMPBELL].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. CAMPBELL. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 116, further proceedings on the amendment offered by the gentleman from California [Mr. CAMPBELL] will be postponed.

Mr. COBLE. Mr. Chairman, I move to strike the last word to engage in a colloquy with my friend from California [Mr. CAMPBELL], a brief colloquy, if the gentleman is willing.

Mr. Chairman, the gentleman and I talked about this in the back of the room earlier, and as best I recall, the gentleman was in agreement, but he may not be able to bind others.

I think our colleagues have heard about enough of H.R. 400. Would the gentleman be willing, and it would be unanimous consent, to terminate all debate on this matter at 5 o'clock today?

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. COBLE. I yield to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Chairman, I speak only for myself. I have consulted with my colleague from California. I know my other colleague from California, Mr. HUNTER, will be offering an amendment, and I understand our colleague from New York, Mr. FORBES, will be offering an amendment.

On my own behalf and having consulted with my colleague, I am more than willing to use every effort to end by 5. This is my last amendment.

There is one disagreement. In my family, we speak of little else than patent law, and I am shocked that the gentleman would find that a limitation is somehow preferred by my colleagues on the floor. But if that is my colleague's perception, I would be agreeable.

Perhaps the gentleman would yield to my colleague from California, Mr. HUNTER.

Mr. HUNTER. Mr. Chairman, if the gentleman would yield, certainly I have an amendment that I will be offering at the end of the other amendments and I will try to make it short and sweet and do everything I can to accommodate our friend.

I would anticipate we ought to be finished by 5. I would hate to be at 4:45 or 4:50 and have one to go, but I think we can do it.

Mr. COBLE. Mr. Chairman, I thank the gentleman.

Mr. Chairman, for what it is worth, I ask unanimous consent that all debate on the bill and any amendments thereto be concluded by 5 o'clock today.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

AMENDMENT OFFERED BY MR. CAMPBELL

Mr. CAMPBELL. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CAMPBELL: page 48 of March 20 text, strike line 3, insert:

''111(b) of this title, as to which there have been two substantive Patent Office actions since the filing, shall be published, in accordance''

Line 17, insert:

''(D) 'Substantive Patent Office action' means an action by the patent office relating to the patentability of the material of the application (not including an action to separate a patent application into parts), unless the patent applicant demonstrates under procedures to be established by the patent office that the office action in question was sought in greater part for a purpose other than to achieve a delay in the date of publication of the application. Such Patent Office decision shall not be appealable, or subject to the Administrative Procedures Act.''

Mr. CAMPBELL. Mr. Chairman, this is the last amendment I will offer. It deals with the publication issue.

For our colleagues who have not followed the debate on the floor, I would simply observe that the first amendment I offered was not on this subject; it dealt with prior commercial use. This does. This is the soul of a compromise that I thought made sense.

I will point out that it deals with the obligation to disclose before a patent is

actually granted. Everyone who followed the debate last week is familiar with the argument, pro and con, but I, in good faith, tried to work out a compromise, and we were close, but it was not eventually successful. I believe it is the right way to go, though. Here is what I am suggesting.

The whole argument in favor of disclosure offered by the supporters of the bill is that there is a submarine patent problem. Some patent applicants will keep their application secret, just below the surface for a while, and then ask for a continuation, ask for a delay, and then wait for somebody else to take their idea and turn it into a commercial product; and when they do, then they rise, like a submarine, and fire their torpedoes of litigation. I understand that argument. It has validity, in part.

So what I suggest is, let us require disclosure for some, but by requiring disclosure for all, we run all the risks that we talked about last week. There are good-faith people who are not trying this submarine strategy who want to try to get a patent, but when they are told they are not likely to, they then want to take their idea to a company and say, ''I have a trade secret, are you interested in a trade secret?''

But after the bill passes, if it does today and becomes law, if the other body passes it and the President signs it, well, then, it is gone, because they have already disclosed their secret.

So let us solve the problem of the submarine patent but not cause everybody to have to disclose. That is the element of my compromise.

So how do we determine who ought to disclose? Here is the part that I offer, and I think it is a generous offer. If this is acceptable to the majority of Members, we will have improved this bill. It says, look, I have one pretty good signal. If one has had two actions in the Patent Office, one is possibly involved in gaming the system. Let me emphasize ''possibly,'' because there are a lot of innocent people who have two actions in the Patent Office. Indeed, I am informed by some of my research universities that three or four Office actions are needed before they are absolutely sure.

I am being as generous as I can to try to seek compromise, and I am saying, disclose if you are in the Patent Office and you get two patent actions. That tells me that gaming the system is afoot, maybe.

□ 1500

This amendment says disclose only if we are convinced that you might be a submariner. I think it is a very generous exception, but it does not require everyone to disclose. So the innocent patent applicant who does everything he or she can and just does not get the patent by 18 months can continue to try to get the patent without suffering the consequence that it is disclosed to the world. The person who is attempting to game the system really cannot game it without getting two patent actions.

Let me take a moment and explain what a patent action is. For example, somebody would go in and ask for a continuation; the Patent Office is ready to make your decision and give you a patent, but I, the patent applicant, say: Take your time, please delay it a little more. Please consider the prior use that might have been alleged, for example. Please consider that this patent has more than one possible patentable idea in it, for example.

All of those requests could, of course, be done innocently, but I am suggesting that they are sufficient for us to say the risk of the submariner is there.

In conclusion, I put to my colleagues, if the patent applicant has not even gotten two Patent Office actions, how can this patent applicant be engaged in a subterfuge, an attempt to engage in or an attempt to do a submarine number? It is really practically impossible. That is not how it is done. So rather than force the world to disclose, please, just go after the wrongdoers, and even so, I am sweeping broadly.

That is what I offer. I appreciate the attention of my colleagues.

Mr. COBLE. Mr. Chairman, I rise in opposition to the amendment offered by my friend, the gentleman from California [Mr. CAMPBELL].

Mr. Chairman, I say to the gentleman from California, I have referred to him on many occasions as one of the most learned, if not the most learned, Member of this august body, and perhaps I was presumptuous when I accused him of committing infirmities of clarity. The gentleman might remind me that it was my inability to interpret. But it appeared to me to be an infirmity of clarity, nothing personal meant by that.

The amendment submitted by my friend, the gentleman from California, Mr. Chairman, can be interpreted to require the PTO, Patent and Trademark Office, to complete two substantive office actions in every application filed and still publish all applications in 18 months.

The PTO is simply not able to comply with such a requirement at this time with their existing resources. This solution would force the PTO to ask Congress for a fee increase, which comes, guess where, out of the inventor's pockets. It could also affect the quality of patent examinations, causing more examiners to make mistakes through hurried examinations, and therefore exposing inventors to more court challenges, which can cost millions of dollars. That does not propel innovation, it seems to me.

The second interpretation of the gentleman's amendment could be to delay the publication of all applications until the second substantive office action determining the patentability of an invention. If this interpretation holds true, the gentleman from California proposes to expand the choice over publication offered only to small businesses in H.R. 400. I repeat, we offer that to small businesses in our bill.

But the gentleman from California [Mr. CAMPBELL] would expand that to all applicants, including big business, without granting the inventor a 3-month grace period before publication. This will remove one of the benefits of publishing applications in the United States, the early availability of foreign origin applications in the United States in our language, in the English language.

Title II of H.R. 400 requires publication of foreign origin applications within about 6 months after filing in the United States. That means we see their technology 1 year before any of ours is published and protected in the United States. The amendment offered by the gentleman from California delays the publication of foreign origin applications for a year after the date they would otherwise be published in the United States under H.R. 400. Let us not take away that benefit.

Moreover, the Campbell amendment would delay the publication of applications by U.S. businesses who are also filing abroad, where their applications are already published 18 months after filing in the United States. Delayed publication of these applications that are also filed abroad deprives American inventors of easy access to the same.

Whichever way it is read, the amendment offered by the gentleman from California, it seems to me, favors foreign applicants over U.S. applicants and effectively guts the protections and benefits offered in H.R. 400.

Vote no on the Campbell amendment.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. COBLE. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I would just like to note that the ranking member concurs in the analysis that the chairman of the subcommittee has just outlined.

Mr. GOODLATTE. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment offered by the gentleman from California [Mr. CAMPBELL].

Mr. Chairman, I think the debate here has been wrongly focused on the whole idea that somehow the patent system operates to protect the work of inventors through secrecy. That is not the case at all. We protect the work of inventors through secrecy by using a trade secret process.

Patents operate just the opposite. We protect the rights of American inventors through our patent system when the patent is issued today by telling the whole world that that particular individual is the first to patent that item. That is the protection they get, by publishing the work, by publishing the discovery of the invention.

That is exactly what we are trying to improve in this process by publishing after 18 months. We are, if we simply look at this debate from the standpoint of how many of these can we continue

to not publish, overlooking the fact that we are, in point of fact, having the opportunity to improve our system and improve the protection on those inventors through publication.

The gentleman from North Carolina has rightly pointed out that if we do not change our system, the fact that 75 percent of all the patents filed in the United States are published after 18 months because they are also filed in Japan, in Germany, in France, and other places around the world, in the languages of those countries, in Japanese, in German, in French, so inventors in those countries, the little guys, have the opportunity to see in their own language exactly what everybody else in this process is doing. The small inventor, the major business, anybody in the United States, does not have that opportunity under our system because we do not publish.

Of all the patents filed in the United States, 45 percent are filed by foreign inventors. We do not get the opportunity to see what they are doing in this country because it is not published in English for our inventors to see. If we adopt this amendment, we are going to miss out on what is a major reform in our patent law that improves the conditions, does not harm the conditions for the small inventor.

The second thing that is harmful for the small inventor in our current process is the amount of time it takes that small inventor to get capital to get their product on the market. A major business does not have that problem. They have the capital. They are ready to go with their product, whether they have a patent issued or not. But the little guy has the problem of not being able to get that capital.

Quite to the contrary of the criticism of this legislation by the opponents, the experience in Europe and other places around the world is that when you publish after 18 months, the entrepreneurial investor will be willing to put the money behind your invention sooner because you are being published, and not only are you being published, and this is the critical element, everybody else in the patent process is being published as well, so that entrepreneurial investor has the opportunity to know that you are the first one out of the box because you are the first one being published.

If there is anybody else out there with a competing patent idea, that if they put their money behind you and somehow somebody else is going to get that patent, they now have the opportunity to know that you are the one because you are the first one out of the box with that publication.

The experience in Europe and other places has been that the entrepreneurs put the money behind that little inventor sooner, get their product to market sooner as a result of having that publication.

Finally, the amendment offered by the gentleman from California does not eliminate gaming of the system. As the gentleman from North Carolina [Mr. COBLE] correctly pointed out, it simply changes the nature of the gaming. If somebody wants to force publication of somebody else's patent, then they go through the process of having a patent controversy in the Patent Office. The result is that there is a new way of gaming our system.

That has not improved the system, that has simply changed the way that lawyers and those who want to game the system and take advantage of it, who do not want to bring a new idea to market, who do not want to get the capital to put an idea on the line but rather want to take advantage of somebody else, they will still be able to do it under the gentleman's amendment.

Mr. Chairman, I urge opposition to the amendment and support of H.R. 400, which will truly improve the system not only for all American business but most especially for the little guy.

Ms. KAPTUR. Mr. Chairman, I move to strike the requisite number of words.

I listen to this discussion about why we have to do things in this country to benefit foreign inventors, Mr. Chairman, and I think they should be helped, but not at the expense of our own people. The truth is that if our country has 10 times as many intellectual breakthroughs as any other country in the world, why do we want to conform our system to countries that are not working as well as ours?

The gentleman from Virginia said something about that our inventors need to see all this information from other places, but they are not clamoring for this. We have more inventors in our part of America, and we are the State of Thomas Alva Edison. They are not asking for this to be done. What they are asking for is their property rights be protected, and that their inventions not be opened up to snooping in the 18-month window that the gentleman is talking about, there, that after that they can take a look; for whichever country in the world or whichever inventor in the world wants to take a look at that, and really have special privilege over that intellectual property, which has never been granted by this country before.

If we talk about what other countries do, if you file a patent in Germany or one in Japan, you do not file the kind of detailed patent that you do in this country. We require so much more of our inventors. What is interesting, I just have to put this in the RECORD, and I am going to ask unanimous consent that it be placed in the RECORD, what is driving this entire debate, the amendments, the base bill, is this agreement that our government got itself locked into back in January 1994 called a mutual understanding between the Japanese Patent Office and the United States Patent and Trademark Office.

Mr. Chairman, this is not something that is not significant. This is very significant, because what the United States agreed to is exactly what the proponents of H.R. 400 are trying to get us to pass here. Essentially it says that our Government had to come back to the United States after agreeing to this and agree to introduce legislation to amend the U.S. patent laws to change the term of patents from 17 years from the date of grant of a patent, which has been our current law now, for an invention to 20 years from the date of filing, which is the change that the proponents of H.R. 400 obviously want.

What did we get for this; for changing, turning upside down the system that has created 10 times more inventions, better inventions, intellectual property breakthroughs, than any other country in the world? What we got was an agreement from the Japan Patent Office that says the following; that they would permit foreign nationals to file patent applications in the English language, with a translation in Japanese to follow within 2 months.

So what we agreed to was to turn the entire system that drives job creation in this country and has created the standard of living in this society, and what we get is a little teeny, weeny agreement from Japan that they are going to agree to translate the patents that are filed into their own language.

Mr. Chairman, it seems to me there is something very uneven about this playing field, and for those Members that were not a party to these negotiations, if the staffs have not informed the Members of what is going on here, let me tell them, we are talking about a wholesale gutting of the patent laws that have protected the intellectual property of our inventors. This has not been talked about much in the debate. Our system is completely different than these other countries, but what is wrong with our current system? Why is it so bad? Have these Members' inventors actually been beating their doors down and asking for changes? The only changes my inventors back home have been asking for is to make the maintenance fees more easily payable for them. They are getting too high for the small people, for the small people.

What H.R. 400 does is opens up the possibilities of litigation to the small people, which are the people that are creating the new jobs in this country, making life much more difficult for them, and we get almost nothing for it. I would hope that one of the proponents of the legislation could explain to me how this is an evenhanded deal for the United States, that they are out here. I would hope the gentleman from Virginia [Mr. GOODLATTE] would respond.

Mr. GOODLATTE. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, in responding to the gentlewoman's comments earlier where she said we were helping foreign inventors, quite the opposite. Foreign inventors are helped right now under the current laws of

their countries that publish the 75 percent of all patents filed in the U.S. Patent Office that are also filed in other countries.

The CHAIRMAN. The time of the gentlewoman from Ohio [Ms. KAPTUR] has expired.

(By unanimous consent, Ms. KAPTUR was allowed to proceed for 1 additional minute.)

□ 1515

Ms. KAPTUR. As I mentioned to the gentleman, when you file in Europe or you file in Japan, you file a generic patent. You do not file the kind of detailed patent that you do in this country. We have a different kind of patent system, and the proof is in the pudding. Look at this country compared to the places that we are competing with.

So it seems to me that we should be about the task of saying, if we have created a good system, how do we make the system here function better for our people rather than getting ourselves into a position where we are arguing to rubberstamp an agreement that is going to harmonize the United States with countries whose systems are flat, who commercialize the inventions made here, and we will disadvantage our own people by getting them caught up in all types of litigation.

Why are we making it harder for the people of the United States to protect their intellectual property?

Mr. Chairman, I submit this for inclusion in the RECORD.

MUTUAL UNDERSTANDING BETWEEN THE JAPANESE PATENT OFFICE AND THE UNITED STATES PATENT AND TRADEMARK OFFICE

Actions to be taken by Japan:

1. By July 1, 1995, the Japanese Patent Office (JPO) will permit foreign nationals to file patent applications in the English language, with a translation into Japanese to follow within two months.

2. Prior to the grant of a patent, the JPO will permit the correction of translation errors up to the time allowed for the reply to the first substantive communication from the JPO.

3. After the grant of a patent, the JPO will permit the correction of translation errors to the extent that the correction does not substantially extend the scope of protection.

4. Appropriate fees may be charged by the JPO for the above procedure.

Actions to be taken by the U.S.:

1. By June 1, 1994, the United States Patent and Trademark Office (USPTO) will introduce legislation to amend U.S. patent law to change the term of patents from 17 years from the date of grant of a patent for an invention to 20 years from the date of filing of the first complete application.

2. The legislation that the USPTO will introduce shall take effect six months from the date of enactment and shall apply to all applications filed in the United States thereafter.

3. Paragraph 2 requires that the term of all continuing applications (continuations, continuations-in-part and divisionals), filed six months after enactment of the above legislation, be counted from the filing date of the earliest-filed of any applications invoked under 35 U.S.C. 120.

WATARU ASOU,
Commissioner, Japanese Patent Office.

BRUCE A. LEHMAN,
Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, United States Patent and Trademark Office.

The CHAIRMAN. The time of the gentlewoman from Ohio [Ms. KAPTUR] has again expired.

(On request of Mr. GOODLATTE, and by unanimous consent, Ms. KAPTUR was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Mr. Chairman, if the gentlewoman will continue to yield, 45 percent of the patents that are filed in the U.S. Patent Office are filed by foreign inventors, and we do not have the opportunity to see in the English language what is published by those folks.

Second, no one has addressed the whole point that we have made that these inventors get the capital to bring their product to market sooner, when you publish sooner, so that entrepreneurs who invest know sooner that this is the investment they should put their money behind because that is the person who is going to be getting the patent.

Ms. KAPTUR. Reclaiming my time, Mr. Chairman, nobody is complaining about the current system. People like the protection attendant with the current system. Inventors are not breaking our doors down and coming through the windows asking for these changes. There are a few multinational corporations that want to do a little snooping. And they are famous for buying out inventions of inventors in this country. You know how the current system works. Why would you want to advocate for them rather than the vast majority of inventors who want to have their rights protected.

The CHAIRMAN. The time of the gentlewoman from Ohio [Ms. KAPTUR] has again expired.

(On request of Mr. GOODLATTE, and by unanimous consent, Ms. KAPTUR was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Mr. Chairman, if the gentlewoman will continue to yield, the fact of the matter is we are advocating for the little inventor by pointing out the advantages of the system that we have elsewhere in the world that benefits them. We have seen how it benefits them. It will benefit them here as well.

I have had many small inventors who have contacted me in support of this legislation and, yes, I have had some of those multinational corporations you talk about. They file an awful lot of patents as well and they want their patents protected under our system as well. That is exactly why we need to pass this legislation, to help both.

Ms. KAPTUR. Mr. Chairman, if what the gentleman says is true, then why are all the small business groups of the United States opposed to his proposal: the Small Business Legislative Council, the Small Business Technology Coalition, the National Association for the Self-Employed, the National Patent Association, National Small Business United. If your idea is so good, then why are the small guys who cannot afford suits on the international scene, why are they opposing the bill?

Mr. ROHRABACHER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the gentlewoman's points were right on target. I hope my colleagues who are following this debate in their offices and those people following on C–SPAN and those people reading the CONGRESSIONAL RECORD will note that throughout the debate we have made reference to a subterranean agreement with Japan and have indicated that what we see here today we believe is nothing more than an attempt to implement this agreement, subterranean, hushed-up agreement with the Japanese to harmonize our law, make our law like theirs. And you will notice that that has never been addressed, nothing has been addressed by the other side of this debate to that charge. We make it over and over and over again. And I would like the gentleman from Virginia [Mr. GOODLATTE] to come forward now if he would like to have a colloquy and deny that this has something to do with implementing this secret agreement with Japan. Mr. Chairman, I thank the gentleman from Virginia [Mr. GOODLATTE].

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I note that none of the proponents of H.R. 400 are willing to stand up and explain about this agreement with Japan and how that is driving this debate and what is the relationship between that and these.

Mr. ROHRABACHER. Mr. Chairman, I would challenge Members on the other side of this debate to spend their time and their 5 minutes explaining to the American people why what they are proposing directly parallels a secret agreement that we have made with Japan. They will have time on their side to answer that.

The fact is that the driving force behind this, whether or not the members of the committee are themselves committed to this agreement, the driving force behind this has been to fulfill this agreement. How can you tell? Because there were two avenues to this agreement in harmonizing our law with Japan. There were two major factors that made American law different than the Japanese law.

No. 1 was we had a guaranteed patent term, a guaranteed patent term which meant no matter how long it takes you to get your patent issued, at the end of that time period, would be guaranteed 17 years of patent protection and, No. 2, the other aspect of American patent law, since the founding of our country, was that there was

a right of confidentiality. The inventor had a right, when he applied for a patent, that that would be kept secret and, yes, secret really meant something to those people and has meant a lot to our technological edge throughout the years. They had a right to that until the patent was issued.

This legislation goes in exactly the opposite direction, changes the fundamental rules of the game to correspond with this agreement to harmonize our law with Japan. This is absolutely, the American people should understand that what we are doing is trading a strong system of protection that gave us the leverage on all our competitors in the world, gave us our own national security because we had the edge technologically on our adversaries, we are now changing that to a weak system. And where will that weak system take America?

I would beg to disagree with my esteemed colleague, the gentleman from Illinois [Mr. HYDE]. I believe there are people who are out to destroy us economically. I believe there are other countries in the world and other forces at play in the world that would like very much to destroy America's economic prosperity and to put all of those billions of dollars in their pocket. I am assuming that they are adversaries. I am assuming that our Government should be doing everything we can to strengthen the rights of the American people to thwart those adversaries overseas that would steal their technology.

This bill, H.R. 400, I implore my colleagues, please vote against this monstrous threat to American security and prosperity. Please remember that all the inventors organizations, research departments at our major universities, all the Nobel laureates that have been cited on this floor are begging us not to pass this bill. It will not in any way improve a situation that could not be improved with smaller type improvements and reforms. We do not need to destroy the fundamentals of the system to reform and make our system better.

This is the equivalent, this bill, of cutting off our leg in order to cure a hangnail. If your doctor says, I am sorry, we have to change the fundamental makeup of your body in order to cure that hangnail and we are going to cut your leg off, go to another doctor.

Please, let us not harmonize our law with Japan. God bless the gentleman from Virginia [Mr. GOODLATTE]. Yes, it has worked maybe one way in Europe, but how this system has worked, 18 months with publication, how has it worked in Japan? The economic shoguns, the people, the elite of Japan have beaten down their people in submission every time they have raised their head. The Japanese do not invent anything because when an inventor applies for a patent in Japan, he is beaten down and his invention is stolen. They will do that to us, too.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

I note, I thought it was rather an odd orchestration when my friend from Ohio challenged anybody to stand up and respond, and her colleague from California then refused to allow anyone to do it. I think we should notice that there was a certain reason why no one stood up to respond. The gentlewoman from Ohio, she said, why does not someone respond? And the answer was, the gentleman from California would not let them.

Mr. Chairman, I yield to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding to me.

I just want to make the point that the so-called agreement that the gentleman refers to is not something that has been honored in any way, shape, or form by this Congress or by the Committee on the Judiciary that comes forward with this legislation.

We are a first to invent Nation, not a first to file Nation. That is what they want to have. We have always had a number of very significant differences in our patent system.

All we are doing is saying that these are things that help us in this country, and we want to modify our system to engage small inventors and large inventors in having the opportunity to receive the benefits of publication. This is not a battle over trade secrets. There is a mechanism to protect trade secrets for anyone who wants to take advantage of it. Patents are protected by broadcasting to the whole world that an individual has the first to invent, and we should protect that by advancing publication where it helps.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, if the gentleman from Virginia's statement is correct, then why does H.R. 400 embody the Japanese agreement?

Mr. FRANK of Massachusetts. Mr. Chairman, let me respond now. First of all, I want to congratulate my friend from California. I did not realize he had such good intelligence sources, because he has been waving around a secret agreement.

My reaction was to wonder, if it was a secret, where he got it. And I do not want to force him to reveal his sources, but apparently the gentleman from California has some tentacles into the intelligence networks of either America or Japan, because he is privy to secret agreements. Frankly I did not think it was that much of a secret, and the fact that the gentleman had it did not surprise me. But when he waved it around as a secret agreement, I was little bit puzzled.

I just want to totally disagree with the conspiracy theory here. This is a difficult subject in some regards. People who have different economic interests may have different views. There is room for legitimate intellectual debate here.

I and others have had some differences with the bill. H.R. 400 today is a different bill than it was before. There are some close questions. Some of the questions the gentleman from California [Mr. CAMPBELL] raised about prior use, I had hoped to work with him further. But this is not some conspiracy.

There was not a secret agreement signed in some tunnel in Tokyo. The gentleman from California is refuting me on a secret agreement by waving that secret around. I have to say, it is a pretty poor secret that falls into the hands of the gentleman from California. It is not a secret. There is a discussion of policy. We are making these changes. Some of us make changes in this bill without checking with anybody else. And the unwillingness to debate the issue on the merits but to invoke these kinds of conspiracy theories, I think ill-serves the policymaking process.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I think that the secret source for uncovering this secret agreement has been found. It is the Commerce News Press Release for immediate release. It is 1994. The headline is, ''American Inventors Promised Swifter, Stronger Intellectual Property Protection by Japan.''

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, this is very sneaky. Not only is the Commerce Department signing secret agreements, but they are then publicizing their secret agreements to throw people off the track of the fact that they had a secret agreement. I think that is an underhandedness that we ought to put an end to.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I did not use that term.

Mr. FRANK of Massachusetts. Mr. Chairman, I understand that. I realize the gentlewoman did not say that. That is why I did not say she said it. It was the gentleman from California.

The gentleman from California has been waving this around talking about a secret agreement. My friend from California over here has just pointed out that this secret agreement was announced. I think we are entitled to point out that this was not such a big secret and that notion I will stress for this reason. Sure there is reason to debate this. I have agreed with some of the points Mr. ROHRABACHER made, and I have supported some amendments to move it more in his direction, but to denounce it in these terms, to talk about secret agreements and to invoke conspiracies of people to be beholden to foreign powers to undermine American economics is just not a good idea.

Ms. KAPTUR. Mr. Chairman, if the gentleman will continue to yield, does the gentleman deny that the content of that agreement is now the driving mainline inside of H.R. 400? The rollback?

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 30 additional seconds.)

Mr. FRANK of Massachusetts. Yes, I deny it, Mr. Chairman. I will tell the gentlewoman this, I have been working on this bill. I was originally a cosponsor of Mr. ROHRABACHER's bill. We made some changes. I have met with people in biotech. I have met with people in universities, big inventors and small inventors. I have proposed some changes. I did not even read the secret agreement. That agreement may not be a secret from a lot of people, but it was secret from me. So I absolutely deny that in my work on this bill, guided as it has been by conversations with Americans, that I was in fact the hidden puppet of the emperor of Japan.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Virginia.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has again expired.

(On request of Mr. GOODLATTE, and by unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 1 additional minute.)

□ 1530

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, I want to make the point if this is some conspiracy that came up within the last 2 years, it is interesting that U.S. patent commissioners have been seeking this change. U.S. patent commissioners of both political parties have been seeking this change for 20 years. The Nixon administration, the Ford administration, the Reagan administration, the Bush administration all sought these changes long before there was any so-called secret agreement.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, what we finally should do is to give credit to the literary hand that runs us all. Clearly this was motivated by the purloined letter, where the way to hide it was to leave it out in public, because, apparently, the Commerce Department stands accused of having signed a secret agreement to govern us all and then nefariously publishing that secret agreement to cover their tracks.

Mr. HUNTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I wanted to speak just for a minute because the gentleman from Virginia [Mr. GOODLATTE] made several points about the European and the Japanese system and how they have a large number of high-technology start-ups. I think that goes right to the essence of this publication requirement in the amendment of the gentleman from California [Mr. CAMPBELL].

I want to read a paragraph from a gentleman who is a patent lawyer, considered to be an authority on patents. I think it is a very excellent summary of the problem with early publication. He says:

> Moreover, if early stage inventions of start-ups, small businesses and individual inventors are prematurely disclosed, the innovators will quickly lose any advantage or headstart to establish financially stronger imitators. Unless start-up businesses can get a strong foothold in the marketplace before infringers appear so that they can afford to assert their patent rights, these rights become virtually worthless.

He concludes by saying this, and this goes right to the gentleman's point, he says, ''These are two major reasons that Japan and Europe have virtually no high-technology start-up businesses.''

Now, I think we should all be proceeding from the same page with respect to the facts. As I understand it, and the reason I have this graph up here is because this is a factual graph. It shows that the United States has 175 Nobel laureates in science and technology; Japan has only five and that may be instructive to us here. The information I have is that there are almost no high-technology start-up companies.

That is the lifeblood of the American economy. But in Europe and Japan there are almost no high-technology start-up companies, and it is because these little companies need running room. They need to be able to go out before they get a patent and start lining money up.

Early publication, according to these inventors that are here, and I am quoting one of their letters, early publication will ''kill us.'' They will lose the one thing that they have, the secrecy; the one thing they can offer, the confidentiality to an investor to get him or her to invest money in their particular operation.

So unless the gentleman from Virginia [Mr. GOODLATTE] has information to the contrary, my information is that there are almost no high-technology start-up businesses in Japan and Europe, and that is because those countries are production heavy. They are not idea heavy, they are production heavy. We have the innovators, we have the creators of ideas, and our people need that protection.

Japanese businesses and European businesses, perhaps legitimately, want to aid their industrial base. And the way they aid their industrial base is by getting American ideas into the assembly line quickly and cheaply, and they can do that with early publication.

Now, according to the same analyst, the reason there are not a lot of high-technology start-ups in Japan is because once a little inventor comes out with an idea, and it is not protected by patent when he has to publish early, he is immediately flood patented. That means that people patent around him by making very incremental changes in his idea, so that if he varies the slightest to the left or right from this little alley that has been left for him and his invention, he runs into Mitsubishi's or Toshiba's patent or some other large company.

There is a reason why we have 175 Nobel laureates in the United States in science and technology, many of whom, as we have discussed on the floor, the inventor of the MRI, the inventor of the pacemaker, and many others who oppose this bill and support the Rohrabacher substitute, our inventors are afraid of early publication and they do not want to see it.

So I would support the enlargement of the publication protection that is manifested in the amendment offered by the gentleman from California [Mr. CAMPBELL].

Mr. ROHRABACHER. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, just a question of the gentleman. He mentioned patent flooding, a practice that happens in Japan, where the big guys surround the little guys and beat them down trying to steal their intellectual property rights.

If we change our laws exactly like Japan's, to make it just like Japan's, which is harmonizing our law, which is the secret agreement, and I say secret agreement because I did not know anything about it as a Member of Congress. I was a Member of Congress at this time. Probably 1 out of 100 Members of Congress knew anything about this agreement with Japan.

But if we harmonize our law with Japan, will that not mean that these same Japanese companies can come here and do in the United States to our little guys what they are doing to their people in Japan?

Mr. HUNTER. Mr. Chairman, reclaiming my time, I would say to the gentleman that that is absolutely right. And the other thing is there are big companies that are infringers that, if they had the opportunity, would flood patent around a small entrepreneur.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has expired.

(By unanimous consent, Mr. HUNTER was allowed to proceed for 1 additional minute.)

Mr. HUNTER. Mr. Chairman, I guess my point is this. We need to get some running room, some momentum, the opportunity to go out and line up investors before the patent is issued.

The point that is made by this patent analyst is very good. He said unless startup businesses can get a strong foothold in the marketplace before infringers appear so that they can afford to assert their rights, that means hire lawyers, these rights will become virtually worthless.

It is very easy to spend a lot of money on lawyers early in the process. This early publication takes away their running room and their ability to

get a foothold in the investment community and ultimately in the marketplace. That is the problem with early publication.

So I strongly endorse Mr. CAMPBELL's amendment that to some degree enlarges publication avoidance rights.

Mr. ROHRABACHER. Mr. Chairman, if the gentleman will continue to yield, one other correction to the statement made by the gentleman from Virginia. He stated the Reagan administration sought these changes.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has again expired.

(By unanimous consent, Mr. HUNTER was allowed to proceed for 30 additional seconds.)

Mr. HUNTER. Mr. Chairman, I yield to the gentleman if he wants to complete his statement.

Mr. ROHRABACHER. Mr. Chairman, my office has been in contact with Clayton Yeutter about these changes that were mandated. I am sorry to say to the gentleman that the Reagan administration did not support the changes that are being sought in H.R. 400.

What the gentleman is mistaking is the heads of the Patent Office, who were probably working for the Reagan administration and other administrations, those former heads of the Patent Office are now living on consulting fees and retired from the Government, and they can take whatever stand that they need to take.

Ms. LOFGREN. Mr. Chairman, I move to strike the requisite number of words.

As I have listened here to this very vigorous debate, I have felt some concern, because I think there is some confusion that has been created, not intentionally I am sure.

I generally, do not like agreements that are made by any administration when the Congress is not in agreement with them. I was not a Member of the House of Representatives in 1994, when this agreement was entered into. I was happily on the Board of Supervisors of Santa Clara County, but I can recall at the time a very vigorous discussion in Silicon Valley that I participated in as a public figure about whether or not innovators and inventors believed that we should change our system to first to file, as opposed to first to invent. And it may not be that every part of the country has that kind of vigorous spirited debate about patent reform but as the gentleman from California [Mr. CAMPBELL] is aware, that is the sort of thing that is discussed at home in Santa Clara County, and there were divided opinions. I think that for the most part people are very satisfied with H.R. 400 in Silicon Valley.

I wanted to point out that we are not attempting to conform American patent law to Japan's laws or the European Union. What we are attempting to do is to make sure our innovators have every protection, that there is an even playing ground, that innovators are not put at a disadvantage.

I think if one looks at the nature of patent law, and, actually, I have had occasion to get a copy of the Japanese patent law and compare it to United States patent and copyright laws, and almost word for word patent applicants in Japan are required to do what patent applicants in the United States and the European Union are required to do.

Mr. Chairman, I submit for the RECORD a copy of comparison between the Japanese, the United States, and European Community patent law.

JAPANESE LAW

(4) The detailed explanation of the invention under preceeding subsection (iii) shall state the invention, as provided for in an ordinance of the Ministry of International Trade and Industry, in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art to which the invention pertains.

U.S. LAW

§112 Specification.—The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

EUROPEAN COMMUNITY

Article 83, Disclosure of the Invention.—The European patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

I believe it is important that we talk about protecting our own people and our own innovators. There has been a lot of discussion that somehow the big, bad multinationals are after passage of this bill to the detriment of America.

Well, the National Venture Capital Association members were here last week in the Capitol at a meeting, and the venture capitalists, who fund the startups, the little guys that are in the garages with the great ideas, they are for H.R. 400. They vigorously oppose the amendment defeated last week, and they are for small American innovators getting a better chance to be successful in America.

I saw the gentleman from California's chart about Nobel prize winners in America vis-a-vis other parts of the world, and it makes me proud that we have so many great scientists in our country. I think we all have that pride. We want to make sure that we continue to have the cutting edge in innovation, that we continue to do better than everyone else in the world.

Whether we agree on all of these amendments or not, I think as Americans in this Chamber we all agree we want our country to be successful. We want to keep that leading edge, because we know that the high technology, high value-added jobs that are represented by the so-called big, bad multinationals, companies I thought were good guys, like Intel, as well as the little bitty guys that are about to be funded by venture capitalists, and hopefully fulfill their dream to become a big guy like the Intels, that it is in protecting their interests vis-a-vis our foreign competitors that our future lies.

Mr. Chairman, at this point we have had a very long discussion on this matter, and I do not want to unduly prolong it. I would just note that for those that are concerned about the memorandum entered into in 1994 between Commissioner Lehman and his counterpart in Japan, it was, unfortunately or not, depending on one's point of view, reached quite some time ago by the United States, and it is very clear that H.R. 400 is not really what was envisioned by the agreement although as far as I am aware we have gotten the advantage of some of their promises.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I want to direct my remarks to my dear friend, the gentleman from California [Mr. HUNTER], who is one of the great consumers of venison in this or any other Congress.

I am proud, too, as the gentlewoman from California [Ms. LOFGREN] stated, of the number of Nobel Prize winners in the United States, but I just am uncomfortable with that kind of a chart, because what it seems to be saying is that Occidentals are smarter than Asians. It is kind of a racial bias to say that some groups, some races, some ethnic clusters are smarter than other people. I do not know what else we can draw from that.

I went and looked up all the Nobel Prize winners in chemistry, physics, medicine, and physiology from 1981 to 1995, and, yes, the United States had 57 percent of them, but 43 percent were foreigners from all over the globe. All over the globe.

Of course, it is a Swedish prize, given up in Stockholm by a group of Occidentals, I guess. I would not claim Asiatic bias, and I know they know where Japan is, but I would just hesitate saying one group of people are just smarter than another group.

I know that just because someone is paranoid does not mean people are not after them. That could be true. But I have detected some awfully serious Japan bashing here, and I am surprised, because what we are aiming for in H.R. 400 is what the Patent Commissioners of President Ford, President Reagan, President Nixon, President Bush all wanted, 18 months publication, which protects the inventor because he has provisional rights as against the world as though he had a patent and can enforce it.

□ 1545

But it forces the foreign inventor who wishes to be protected in our country to get published, too, that 45 percent of applications from overseas to be published, too. And in addition, those submariners that are cruising

under the bottom have to surface and they cannot seduce other people into investing money and then finding they are in the middle of a lawsuit.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentlewoman from California.

Ms. LOFGREN. I just thought as a Swedish American I should speak as to the Nobel Prize committee and the number of Americans who are awarded Nobel Prizes.

We know from Silicon Valley that Americans, and as the chairman has referenced, come in all stripes and from every part of the globe originally. One can walk into any high-tech company in the Silicon Valley and it feels like being in the United Nations, but they are all good Americans. Many of our Nobel Prize winners are originally of Asian descent, and we are proud of them as well.

Mr. HYDE. I remember Wernher von Braun. He had an accent, but he was certainly a brilliant scientist. He came over here. A fellow named Einstein did pretty well.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from California.

Mr. HUNTER. I thank my friend for yielding.

Let me just say that the gentleman has made my point. My point is not that there is any ethnic difference between the Nobel Prize winners here and the ones in Japan. In fact, the gentleman was chuckling at my pronunciation of a number of these names because there are not many Smiths and Joneses on this list. The point is that these people from all over the globe came to America for a reason. The reason was they got better property rights protection in terms of intellectual property than they do in Japan.

Mr. HYDE. They have freedom in this country. Freedom.

Mr. HUNTER. The point is you have a different system. It is the publication that kills the early innovator, the entrepreneur.

Mr. HYDE. Will the gentleman agree that once publication occurs at 18 months, the average patent is issued at 19 months? Would the gentleman agree to that?

Mr. HUNTER. I just got a letter from the Patent and Trademark Office. It says fully 30 percent of the patents that are going to be issued are not yet issued at 18 months. Will the gentleman agree with that?

Mr. HYDE. What about provisional rights? Does the gentleman agree that there is protection called provisional rights following publication? The inventor then says, ''Look, I did this, I invented this''?

Mr. HUNTER. Here is my answer to the gentleman. My answer is that 2 or 3 percent of royalties, if you can afford the lawyer to get them, are no substitute for getting 20 to 30 percent of the action, which is what an inventor gets when he lines up the money, the investors, and he gets to produce his product himself instead of trying after the fact to get partial payment from a company that took his invention.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Virginia.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has expired.

(On request of Mr. GOODLATTE, and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. GOODLATTE. I thank the chairman for yielding. Mr. Chairman, on that very point the fact of the matter is those inventors get the opportunity to get the capital behind their project, their invention, sooner with publication. Because not only are they published but their competition is published. So the inventor has the opportunity to say to that entrepreneur, that person who is going to put the dollars behind him, ''You can put them behind me with confidence.''

Right now many inventors are complaining to the gentleman from California [Mr. ROHRABACHER] saying they are worried about the gap between 18 months and whenever they get their patent because they will not be able to get the capital during that time. The reason they cannot get the capital during that time is because they do not know, the entrepreneur does not know that they are the ones who are going to get it. Under this procedure, they will.

But I want to address, if I may, the gentleman's very, very asserted message that somehow we are attempting to conform our patent laws to the Japanese, nothing could be further from the truth, when we take one concept that is held by many, many other countries and apply it in this legislation to say that somehow we are now harmonizing our patent law with the Japanese law. We most certainly are not.

The United States is a first-to-invent nation. Japan is a first to file. The United States has immediate examination. Japan has deferred examination. The United States process their patents in 20 months, on average. Japan takes 8 years. We have protections for universities who publish early. There is no such protection in Japan. And we have, as the chairman noted, provisional rights that give additional protection for those inventors. They do not have those rights in Japan. We are not following the Japanese here. We are leading the way as we always have in patent law.

Mr. PEASE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, last week I learned a lesson at this microphone about how quickly 5 minutes pass, particularly when one is being questioned. But today in hopes to give an opportunity for those who still have brief comments to share as we bring this to a conclusion, I have agreed to yield to my colleague from California, and if there are others who would like part of that time, please let me know.

I just wanted to follow up a statement made by the chairman of the committee, and that deals with a portion of the bill that has not been discussed but which I think is extremely important as we talk about the publication at 18 months and the fact that the Patent Office tells us that currently the pendency, average pendency time for a patent in this country is 21 months. Obviously, more than the 18.

However, under current law, funds intended for the PTO are being diverted to other purposes. Last year, $54 million in funding for the PTO was diverted from the PTO to other programs under the budget, and for fiscal year 1998 the President's proposed budget will divert $92 million of the user fees to other areas of the budget. If the PTO were allowed to keep those fees which H.R. 400 does allow, the time to process patents would be reduced dramatically and this whole discussion of whether publication at 18 months is problematic or not would be made moot.

Mr. Chairman, I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, I want to thank my friend and colleague from Indiana who is especially gracious given that we have parted company on some issues of this bill. The reason I asked the gentleman to yield is I thought it might be useful to talk about my amendment on which we will have a vote.

The bill as it is now written has an exception. It is a good idea. The bill now has an exception for somebody who is not likely to be a submariner and who is small. In that case, you do not have to disclose. You do not have to publish. It is a good idea.

The way they tell if you are not a submariner is if you have not yet had two Patent Office actions. It is pretty rough justice, but it will do. So my amendment says if that is right, if that is how you tell who is not a submariner, then you should not have to disclose whatever size you are. And if you want to give an exemption for small applicants, that is the gentlewoman from Ohio's amendment that will be coming up next.

So if your idea is to help small business, great, vote for the Kaptur amendment, and if your idea is that if you have not even had two actions from the Patent Office, you are not gaming the system, then you should vote for the Campbell amendment.

I just conclude by noting that that is the very logic in the exception provided by the bill itself.

Mr. PEASE. Mr. Chairman, reclaiming my time, I do oppose the amendment offered by my friend from California. I do believe that the combination of publication with the rights that attach at the time of publication and the funding that would be provided to the PTO in order to allow it to advance

the time that it takes to grant patents outright is the best combination for protection of all American inventors, large or small.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. CAMPBELL].

The question was taken; and the chairman announced that the noes appeared to have it.

Mr. CAMPBELL. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 116, further proceedings on the amendment offered by the gentleman from California [Mr. CAMPBELL] will be postponed.

Are there further amendments?

AMENDMENT OFFERED BY MS. KAPTUR

Ms. KAPTUR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. KAPTUR:

Page 48, insert the following after line 21:

''(C) An application filed by a small business concern entitled to reduced fees under section 41(h)(1) of this title, by an individual who is an independent inventor entitled to reduced fees under such section, or by an institution of higher education (as defined in section 1202 of the Higher Education Act of 1965) entitled to reduced fees under such section 41(h)(1) shall not be published until a patent is issued thereon, except upon the request of applicant, or in any of the following circumstances:

''(i) In the case of an application under section 111(a) for a patent for an invention for which the applicant intends to file or has filed an application for a patent in a foreign country, the Commissioner may publish, at the discretion of the Commissioner and by means determined suitable for the purpose, no more than that data from such application under section 111(a) which will be made or has been made public in such foreign country. Such a publication shall be made only after the date of the publication in such foreign country and shall be made only if the data is not available, or cannot be made readily available, in the English language through commercial services.

''(ii) If the Commissioner determines that a patent application which is filed after the date of the enactment of this paragraph—

''(I) has been pending more than 5 years from the effective filing date of the application,

''(II) has not been previously published by the Patent and Trademark Office,

''(III) is not under any appellate review by the Board of Patent Appeals and Interferences,

''(IV) is not under interference proceedings in accordance with section 135(a),

''(V) is not under any secrecy order pursuant to section 181,

''(VI) is not being diligently pursued by the applicant in accordance with this title, and

''(VII) is not in abandonment,

the Commissioner shall notify the applicant of such determination.

''(iii) An applicant which received notice of a determination described in clause (ii) may, within 30 days of receiving such notice, petition the Commissioner to review the determination to verify that subclauses (I) through (VII) are all applicable to the applicant's application. If the applicant makes such a petition, the Commissioner shall not publish the applicant's application before the Commissioner's review of the petition is completed. If the applicant does not submit a petition, the Commissioner may publish the applicant's application no earlier than 90 days after giving such a notice.

''(iv) If after the date of the enactment of this paragraph a continuing application has been filed more than 6 months after the date of the initial filing of an application, the Commissioner shall notify the applicant under such application. The Commissioner shall establish a procedure for an applicant which receives such a notice to demonstrate that the purpose of the continuing application was for reasons other than to achieve a delay in the time of publication of the application. If the Commissioner agrees with such a demonstration by the applicant, the Commissioner shall not publish the applicant's application. If the Commissioner does not agree with such a demonstration by the applicant or if the applicant does not make an attempt at such a demonstration within a reasonable period of time as determined by the Commissioner, the Commissioner shall publish the applicant's application.

Page 48, line 22, strike ''(C)'' and insert ''(D)''.

Page 49, line 16, strike ''(D)'' and insert ''(E)''.

Page 49, line 17, strike ''(C)'' and insert ''(D)''.

Page 50, line 2, strike ''(C)'' and insert ''(D)''.

Strike title V of the bill and redesignate the succeeding title, and sections thereof, and references thereto, accordingly.

Amend the table of contents accordingly.

Ms. KAPTUR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

Ms. KAPTUR. Mr. Chairman, it is obvious that this patent bill has engendered substantial and necessary debate. That means that there are some unsolved problems inherent in the basic bill.

One of the most important issues that we wish to bring up for amendment today has to do with the treatment of small business as opposed to big business in the base bill. Our amendment would exempt small business as defined by the Patent Office itself, 500 or fewer employees, based on the fee schedule that they use to distinguish between large and small business. It would exempt small business, universities, and individual independent inventors from having their patents published prior to when that patent is granted. This gets at one of the major objections of the opponents to the base bill.

Our amendment also fixes the submarine problem, which I will discuss in a second, but basically it sets up a process that is more fair to get at the problem of when a patent has not risen out of the depths of the review process, and, third, it strikes the reexamination provisions. Because what we do not want to do is to open up more litigation for the small inventor that really does not have the deep pockets of some of those who very much want to receive some of the benefits in the parts of H.R. 400 that we do like.

So our amendment has three parts to it: It exempts small business, universities, and individual independent inventors from having their patents published prior to grant. We do this because in the base bill the 18-month publication would reveal new ideas to the world technical community before that inventor had the patent and, frankly, that is an open invitation to stealing, it is an open invitation to copying, and it places a much greater burden on that inventor, especially when they are small, to protect their invention. Our amendment also is proposed because we want to offer the small inventor some leg to stand on, a fairer system.

Our amendment is also offered because we want to make sure that foreign corporations and foreign governments do not have easier access to American technology as proposed by small inventors, and we want to protect from this undue litigation that seems to be burdening our system from one end to the other, and why complicate it more under the proposed bill?

I might just point out that in the way the H.R. 400 is currently proposed, if you end up defending your patent, that will not happen in a court of law. There will not be a jury. There will not be a judge. You will be in the Patent Office, this new creature, we do not know what it is going to look like yet, and it is going to take a lot of money to defend yourself in this new system that is being set up and this new entity that is being set up.

So our effort is to say, look, OK, for those people who want to play that game, let them do it, but for the small inventors and the small businesses and the university community that do not want to get engaged in that system, give them a level playing field to play on as well.

I might mention that in 1995, the White House Conference on Small Business adopted a recommendation which specifically recommended to Congress that patent applications remain unpublished until the patent is granted. That was the White House Conference on Small Business, a large group of people that come in here from across the United States. This was an important enough issue that they put it on the agenda of the White House Conference on Small Business. They do have legitimate concerns. We are only asking those who have already started to repair H.R. 400 to please consider this proposal.

We incorporate in the amendment as well important language to deal with the submarine patent issue. The amendment adopts the Rohrabacher language in the substitute that was debated last week, and our amendment lays out specific exceptions for when a patent can be published early, perhaps due to continuous delays, perhaps abandonment, perhaps pending more than 5 years, all of the concerns of the proponents.

Mr. ROHRABACHER. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, on this particular point, the antisubmarine patent language in our bill was the strongest language that we could possibly put into the bill. For 2 years I pleaded with the other side of this issue, to everyone on the other side, please give me the strongest language you can possibly give me, I will include it in the bill just so long as it does not eliminate and end the guaranteed patent term.

The CHAIRMAN. The time of the gentlewoman from Ohio [Ms. KAPTUR] has expired.

(On request of Mr. ROHRABACHER, and by unanimous consent, Ms. KAPTUR was allowed to proceed for 1 additional minute.)

Mr. ROHRABACHER. We pleaded and pleaded. Give us anything that will satisfy you that we have put the submarine patent issue to bed. We begged them, please give us that language. But, no, they would not. They would not touch it with a 10-foot pole because their purpose was not ending the submarine patent issue.

□ 1600

We instead, I went to the gentleman from California [TOM CAMPBELL], distinguished professor, man respected throughout this body for his legal knowledge, and he finally came up with the strongest patent, antisubmarine patent language that he could come up with. That is what was in the bill. We did that because we did not want people to destroy the fundamental patent system or protections that was a guaranteed 17-year patent system or patent in the name of getting at submarine patents. That is like cutting a leg off to get to a hangnail or destroying freedom of speech for everybody because there is some pornographer out there printing a pornographic magazine.

No, we have taken care of the submarine patent issue. We have included that language.

The CHAIRMAN. The time of the gentlewoman from Ohio [Ms. KAPTUR] has expired.

(By unanimous consent, Ms. KAPTUR was allowed to proceed for 1 additional minute.)

Ms. KAPTUR. Mr. Chairman, I really appreciate this opportunity because I know that the folks that have worked on H.R. 400 have tried very hard, and frankly it is a work in progress, and as we work harder, it gets better all the time.

I just wanted to summarize and say on this amendment we really have made a legitimate effort to protect the interests of the small inventor, the small business, the university inventors, the university community that is not satisfied with the base bill. We would ask for colleagues' consideration, and I would just end by saying that on the reexamination provisions of the base bill, recognize that this is going to cause a heavier burden on inventors to defend their patents because it gives the right to anyone in the world to submit a request to invalidate a U.S. patent at any time in its 17-year life. On this one, the big money will win as these patent fights go. Please support the Kaptur amendment. Please defend small business, the small inventor and the university community where so many of our new ideas come from.

Mr. CONYERS. Mr. Chairman, I rise in opposition to the amendment offered by the gentlewoman from Ohio [Ms. KAPTUR].

Mr. Chairman, first of all, I would like to establish my credentials of defending small businessmen and working people as much as anybody that is on this floor at this moment. That being said, I want to point out that this is not in the interests of small business. So we have a little bit of a definitional problem as we approach the Kaptur amendment. That is that we both support working people and small businessmen except one thinks that this amendment will help small businessmen, and myself thinks that it will not help small businessmen, and I am going to try to explain for all those in this body that want to help small businessmen why the Kaptur amendment is not good, it is bad. It is bad for this first reason:

One, what she has cleverly put into this, or somebody, from lines 6 to 11 is to bring back the current law that we are changing. The bill currently on the floor helps small businessmen. This changes it back namely by saying that of the Higher Education Act entitled to reduce fees from such section shall not be published until a patent is issued thereon except upon the request of the applicant. This just went back into the bill that we voted on last week and lifted up this current law language.

This allows submarining. Submarining, now known to everybody, is bad. We do not want bad stuff in the base bill. This would allow submarining and those who would indulge in that, and they are not all big businessmen. The businessman on the cover, the picture of the businessman who was the No. 1 submariner in the country on the Wall Street Journal, was not representing a multinational corporation. He was a small businessman.

Point No. 2: Why do we have an amendment exempting institutions who do not wish to be exempted? Why? In whose great wisdom, not on the committee, have we decided that universities need to be exempted? Who is asking? The answer: Nobody. But it is thought to be a pretty good deal.

It is not a good deal, but not only is it not a good deal, it is not desired.

So for those reasons, the three that I mentioned, I respectfully urge a very strong and overwhelming rejection of the amendment of my good friend from Ohio's amendment.

Mr. COBLE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the gentleman from the Roanoke Valley said it earlier about publication. Some people have made publication the devil. Our Constitution provides the grant of a monopoly for a limited time in exchange for sharing one's secret with the public. That simplifies a definition of the patent law. Today that constitutional exchange is being circumvented by whom? By patent submariners.

Now here we go again. The gentlewoman from Ohio [Ms. KAPTUR] has reincarnated Mr. ROHRABACHER'S failed attempt to allow abuses of the patent system. This was defeated last Thursday by the House, and I again thank each of my colleagues who stood tall with us, and it ought to be defeated again. This reminds me of the Cary Grant movie, ''The Pink Submarine.'' This is the same submarine, my friends, with a new coat of paint. This amendment should really be called an invitation.

My colleagues all remember Mr. Lemelson, our patent submariner, our multimillionaire patent submariner. It reads something like this. ''Dear Mr. Lemelson,'' or any other prospective patent submariner, ''You are invited to purposefully delay your application at the Patent and Trademark Office for your own benefit to the detriment of the American consumer.'' Just as the gentleman from Michigan said, this is no friend to small business. ''Don't worry about the phony escape clause regarding dilatory tactics. No one can prove it. Time? Oh, as long as you want, perhaps 25, 30, 40 years. Place? Unknown. After all, your application is a secret so that no one will have the benefit of avoiding duplicating your efforts because you can successfully hide from them. You are submarining. You are laying low in the bushes. You are laying low and playing possum,'' as I said last week. ''Date. The date is up to you. You show up when you want to show up. P.S., please pass this invitation on to a friend.''

This license to allow professional litigators to clog our courts and stifle American innovators with expensive lawsuits that can end in bankruptcy for those who actually hire American workers and invest in the economy cuts into the heart of the constitutional charge to Congress to offer a limited monopoly to an inventor in exchange for sharing secrets. That is right. Publication is a necessary ingredient of the process.

The gentleman from California [Mr. ROHRABACHER] the gentlewoman from Ohio [Ms. KAPTUR], they do not seem to believe that submarining is a problem. That is why this amendment contains a loophole big enough to drive a submarine through. But let me quote from the Wall Street Journal from April 9. Many of my colleagues read it. It describes a new class of patent lawyers out to make a business in the submarine industry. ''The clear winners,'' writes the Journal, ''so far are the lawyers. Mr. Lemelson also employees a small army of them. One of Mr. Lemelson's lawyers pretty much

thanks himself for that, noting an old joke. 'One lawyer in town, you are broke.' He boasts, 'Two lawyers in town, you are rich.'" The article goes on to say that a new breed of intellectual property lawyers has emerged, too.

Many seem to be inspired by Mr. Lemelson's attorney, who pioneered the use of contingency fees in patent cases and whose work for Mr. Lemelson alone has brought him more than $150 million in fees. You think consumers win with this sort of scenario?

The lawyer's success: He lives in a 15,000 square foot house near Aspen, CO, has made the field of submarining a very hot area. Here the cover of the American Lawyer Magazine, a picture of Mr. Lemelson's lawyer basking in the riches, 150 million bucks that belongs to American consumers.

You bet I am worked up about this. This is indeed a grave problem, and it is growing. This amendment, and I will call it Rohrabacher 2, or Kaptur 1, or the sequel to Rohrabacher, again works to protect this practice which stifles American investment and innovation.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. COBLE] has expired.

(By unanimous consent, Mr. COBLE was allowed to proceed for 2 additional minutes.)

Mr. COBLE. I feel obliged to get this into the record before 5 o'clock, Mr. Chairman. I have worked on this now for almost 5 months. When I retire for my evening rest, I am thinking of patents. At early morning hours, when I dream, I dream of patents. When the cock crows the next morning, I awaken, guess to what? The thoughts of patents.

And for the first time since last week, I learned of a secret Japanese agreement. Oh, yes, there is a secret agreement out. The Japanese are going to bash us. Folks, our better argument, the gentlewoman from California said it last week, the gentleman from Illinois, the chairman of the committee, said it last week, I think the gentleman from Massachusetts [Mr. FRANK], perhaps the gentleman from Michigan [Mr. CONYERS] did as well, a better argument could be made that your rank and file Japanese inventor, they want to keep it just the way it is because, under the present scenario, they have the luxury of reviewing publication well in advance over there and then they can play possum and lay low because the time runs for a delayed publication over here.

It would be my thinking they are not happy at all with H.R. 400. But I want my colleagues to dispel this thought about a secret Japanese agreement because there is simply no truth to it.

I thank everyone who has taken part in this, Mr. Chairman, and I thank you. And if I become too emotional, I apologize. But I think I would be remiss if I did not feel strongly about it, because we have plowed the field time and again and it is time to bring in the harvest and head for the barn.

Ms. LOFGREN. Mr. Chairman, I move to strike the requisite number of words.

I have struggled trying to find some way that I can support the amendment of my colleague, the gentlewoman from Ohio [Ms. KAPTUR]. My colleague asked me to review it, and I regret that I cannot support it.

I think many of us are striving to reach comity and to work in a bipartisan manner, but for this amendment it just cannot happen for me and I think that is true for many of us who have worked so long on this bill; and the main reason why is that, as others have indicated, it continues to permit submarine patents.

The manager's amendment went a long way toward addressing the issue, whether anyone believes it is correct or not, addressing even the perception or the anxiety about small inventors, who wanted to not have a published application, who are uneasy about the change and updating of our law for the information age.

And I think that that measure is sound and passed by voice vote last week. However, to provide that an application could never be published or might be published for many, many years later, as could be done with the amendment of the gentlewoman from Ohio [Ms. KAPTUR] and is currently done under our present system, is not acceptable.

I would point out one thing: I know this was not intended, I am sure, by the amendment, but you could, under the amendment, have a foreign inventor come to the United States, file an application for a patent in the United States only, and end up submarining American inventors. And I do not think that is a result that is good for our country.

I want to mention a particular case, because so much has been said about countries in Asia. But the most notorious submarine patentor that I have been able to find is a Swedish individual, an alleged inventor, Olaf Soderblom, who filed for a United States patent in 1968 and it was not issued until 1981, 13 years later.

□ 1615

The very early years of the patent pending application were spent by Mr. Soderblom fighting various battles with other independent U.S. patent applicants over who was the first inventor. However, a lot of the 13 years were used by Mr. Soderblom's attorney to manipulate claims to postpone any action on them.

Mr. Soderblom never participated in or contributed to the public IEEE standards regarding his token ring technologies that he alleged as his idea. As he waited with his application just below the surface, the rest of the world moved forward and the token ring technologies that were really never contemplated by Mr. Soderblom at the time of his filing were invented; and fortunately for him or unfortunately for America, Mr. Soderblom did get some very excellent American patent attorneys.

Press accounts indicate that he was paid over $100 million for his patent, something he never really designed, never used, never participated in. And this money came directly from United States companies and was deposited into his bank in the Netherlands, contributing to our adverse balance of trade.

Mr. Soderblom has never resided in the United States. He has rarely visited the United States. He just came and took our money. Unfortunately, the amendment before us would allow that to occur again.

I also need to discuss the issue of swooping, because it has been discussed several times by several speakers.

Mr. Chairman, one would think by listening to the debate here that the small people, and I do not mean small in stature, but people who are not rich, people who are just starting out, are at risk under H.R. 400. The world, as my mother and father used to tell me, is not always fair. The truth is that one's ability to protect one's patent from swoopers at the time of patent issuance or at the time of publication, when rights attach under H.R. 400, is only as good as one's ability to step forward, get one's lawyers, stand up for oneself, and protect oneself.

Now, fortunately, we have contingent fee operations in America, and there are plenty of attorneys who are willing to protect a good American inventor against an infringing Japanese multinational or Swedish multinational or whatever. But the truth is if one is not willing to fight for one's patent, one does not have any rights that will not be trampled on. That is true under the current system of publication at patent issuance. It is equally true under the proposed protection from the time of publication, 18 months out. I think it is important to say that because nothing changes in this regard as the result of H.R. 400.

The CHAIRMAN. The time of the gentlewoman from California [Ms. LOFGREN] has expired.

(On request of Ms. KAPTUR, and by unanimous consent, Ms. LOFGREN was allowed to proceed for 2 additional minutes.)

Ms. KAPTUR. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I wanted to thank the gentlewoman for her comments. Our intention is to close any loopholes that may exist on submarine patenting, even though that issue is a rather curious one to be raised by the committee, because in the last 20 years between 1971 and 1993, out of 2.3 million patent applications, only 627 have been classified as submarine patents; and at least a third of those were U.S. Government military secrets. So I find it interesting that the gentlewoman spent a great deal of her time talking about submarine patents.

Our intention is to close any loopholes that might be there, and that is why the language is in our amendment.

Let me also say that our concern is profoundly small inventors, small business, and university-based inventors. If the proposal in the base bill that early publication is so good for the small inventor and small business, why have those inventors and businesses not published before the grant of the patent up to now? By current law they have that right. So our intention is to protect the small inventor. Please help us do that.

Ms. LOFGREN. Mr. Chairman, reclaiming my time, under current law, if one publishes one's patent application in America before the patent is issued, one does not have any protection. Under H.R. 400, provisional rights attach at the time of publication. So one is protected from the time of publication. Under current American law, it would be foolish indeed to put oneself out otherwise.

Secondarily, I understand, and I believe, that the gentlewoman does not want to do damage to her country any more than I do. That is not what is at issue, as we both recognize. It is a difference of opinion over how to proceed, how best to protect our country's inventors.

It is my judgment that the hundreds of millions of dollars spent by U.S. companies, and in some cases individuals, to submariners is indeed important. The cited number of 200 does not matter as much as the hundreds of millions of dollars.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Illinois [Mr. HYDE] for yielding.

If Members feel that they may have heard this debate before somewhere, they are absolutely correct. This is precisely what we spent several hours doing on the Rohrabacher amendment last week. We did it upsidedown, backward, there were short speeches, long speeches, ferocious speeches, timid speeches, but it was the Rohrabacher amendment. We are now back into it again. We are now rehashing the Rohrabacher amendment.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I will not yield, Mr. Chairman.

Ms. KAPTUR. Mr. Chairman, this is the Kaptur amendment, it is not the Rohrabacher amendment.

Mr. HYDE. Mr. Chairman, I have the time.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] has the time.

Mr. CONYERS. Mr. Chairman, I will not lecture my distinguished colleague from Ohio on the rules of the floor. Please do not interrupt me when the chairman of the committee has yielded time.

Ms. KAPTUR. Mr. Chairman, I would ask the chairman to please yield to me.

The CHAIRMAN. The gentleman from Illinois has the time, and he has yielded to the gentleman from Michigan. The gentleman from Michigan is recognized.

Mr. CONYERS. Mr. Chairman, that is the second time the gentlewoman has done that.

Now, this is a rehash. I emphasize, this is the same old stuff. Go back and read the RECORD.

POINT OF ORDER

Ms. KAPTUR. Point of order, Mr. Speaker.

The CHAIRMAN. The gentlewoman will state her point of order.

Ms. KAPTUR. Mr. Chairman, the gentleman in the well is referencing this amendment under the name of another Member. This is an amendment offered by the gentlewoman from Ohio [Ms. KAPTUR].

The CHAIRMAN. The gentlewoman may clarify that point in debate but has not stated a point of order.

The gentleman from Michigan [Mr. CONYERS] may proceed.

Mr. CONYERS. Mr. Chairman, let me say that the subject of this discussion has been dealt with already under whoever's name we care to put it. It is not new information. It is the RECORD of last week that is spread with this.

As my subcommittee chairman has said, the gentleman from North Carolina [Mr. COBLE], this brings back playing possum; right? This brings back submarining; right?

Oh, well, if it does, how does that happen? Because in the gentlewoman's amendment, the Kaptur amendment, at lines 8, 9, and 10: shall not be published until a patent is issued thereon, except upon the request of the applicant.

This now allows small business and universities to indulge in submarining, if they choose; it exempts publication, and that takes us back to where we came in. That is what the new base bill of the committee, after several years' doing, is all about.

Mr. Chairman, I would say to my colleagues, please, we do not need to be going back into this. We need to stop submarining, and this is in the interest of small businessmen.

Final point, and I will yield my time back to the Chairman. If the universities needed this, they would have asked us. We have had innumerable hearings, and not one university witness has ever said we need the Kaptur amendment or any language like it. For those reasons I humbly approach the membership to ask them to reject the amendment. I thank the gentleman for yielding to me.

Mr. HYDE. Mr. Chairman, I thank the gentleman. I would just like to point out to the gentlewoman from Ohio [Ms. KAPTUR], a fine Member of this House, that there is form and there is substance. The form is certainly the Kaptur amendment. The substance, however, in my interpretation, as I read it, is Rohrabacher.

Why do I say that? Because under the gentlewoman's amendment, publication of the pending application could occur only if the application has been pending for more than 5 years. Boy, does that protect the submariner. Five years. That is a lifetime in the computer industry, in the biotechnical industry, in the pharmaceutical industry. Five years one can lurk underground, under the surface of the water. And there are other conditions which echo the Rohrabacher amendment, which we debated last week.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I thank the gentleman for yielding, merely to point out that the reviewers of this, the Congressional Research Service, all of the other groups, fundamentally said that the base bill and our bill, that amendment, were equally good on the submarining issue. The substance of our amendment, which is the small business provision, my colleague will not talk about doing this debate. My colleague is trying to obfuscate the most important part of this amendment. Very clever, Mr. Speaker.

Mr. HUNTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the Kaptur amendment. A couple of points have been made that I think need to be answered in this debate on this particular amendment. First, publication, the driving theme of the proponents of the bill is that small inventors need them and need their language and need H.R. 400. Whether they like it or not, this is going to help them.

Once again the gentleman from Virginia [Mr. GOODLATTE] pointed out that he thinks publication is going to help small innovators, because once they advertise this creation to the world, money will swoop in, money will come from the four corners of the globe and they will be able to finance their invention with that money.

Now, the point is, if somebody wants to publish their invention, they can do it. They can do it under present law. There is a provision under present law so inventors can go out and publicize if they want to.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the point about publication is it is not just the choice of the individual inventor but, rather, the publication of everyone's patent applications. If no one else has published, then the entrepreneur has the assurance that that one being published is the one they can put their money behind. If they do not know, if everybody else has a choice of publishing or not, we are back to the same old submarining, gaming of the system.

Mr. HUNTER. Mr. Chairman, reclaiming my time, let me just say that the gentleman's argument is naive. If one goes into a high-technology company today and wants to view some of

their technology for possible financing, one has to sign a stack of nondisclosure agreements.

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, just briefly, to say that that is because they do not have the protection of the U.S. patent system. Publication gives them the provisional right to protection that they do not have when they sign that stack of papers.

□ 1630

Mr. HUNTER. Mr. Chairman, let us walk through what the gentleman just said. He said these people are protected once they publish. They are not protected, and I will tell the gentleman why. To be able to sue for royalties, and that is not 20 or 30 percent of the action, but if somebody else publicizes what they have, they have to show that their invention, that the invention that came out and was utilized by somebody else, was substantially identical to their initial application.

The facts are that when inventors go out and make an initial application, that initial application is often much broader than what is finally patented. So if they make it too broad, if they make the application much broader than the final patent that is awarded and they get that final patent, they cannot come in and sue.

The second thing is that they have to come in and show that they actually had notice of what that person was doing, of that publication. When you send out patent ideas, these ideas that are being published, on the Internet, how are you going to prove that the guy had actual knowledge of what you had?

Last, the whole point that has been made by all these small inventors is this: To sue and get a part of the action, even if it is a 2- or 3-percent royalty, you have to have horsepower. That means you have to have money. If you have not had some running room, if you have not had the chance while your patent was secret to go out there and line that money up, you are never going to be able to do it. That is a fact of life. That is why these inventors hold this stuff tight to their chests. That is why they have not come on H.R. 400.

My good friend, the gentleman from Illinois [Mr. HYDE], my fellow consumer of venison, posed this debate as something, as a Japan-bashing thing, where we are lining up the sons of the Mayflower versus the people of Japanese ancestry.

I would just say to my friend, I am looking at this list of our Nobel laureates, like Franco Modigliano and many others. This is a country where people of every ethnic origin have come to America, used the protection of the patent system to come up with an idea. My friend, the gentleman from Illinois, almost deterred me from using my poster again.

I wonder why it is OK for the gentleman from Virginia to talk about Japan and Europe and why we should look at some of their ideas, but if somebody disagrees with him it is Japan bashing. I still think this poster is instructive.

Japan is production heavy. They specialize in production. They need to get creative ideas into the assembly line. That is why they made the agreement with our patent examiner to get our patents published 20 years after application, rather than 17 years after the patent was actually issued. But once again, the small inventors, the Nobel laureates, the guys who invented the MRI, the guys who invented the pacemaker, those guys are not submariners.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has expired.

(By unanimous consent, Mr. HUNTER was allowed to proceed for 30 additional seconds.)

Mr. HUNTER. Mr. Chairman, I think the question everybody has to ask the committee is this: You have 2.3 million patents granted since 1973. According to the statistics that both sides have cited, there have been 670 submariners in that period of time, and about 30 percent of those were military secrets. That takes us down to less than 400 submariners.

We have crafted a piece of legislation that will rip away privacy for millions of inventors so we can make one guy on the face of a magazine, we can take care of that problem.

The CHAIRMAN. The time of the gentleman from California [Mr. HUNTER] has again expired.

(By unanimous consent, Mr. HUNTER was allowed to proceed for 30 additional seconds.)

Mr. HUNTER. Mr. Chairman, let me just close by saying that the same language that was in the Rohrabacher bill is in the Kaptur bill. CRS has said that both sides, both types of language, would likely end the practice of submarine patents.

Mr. ROHRABACHER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the reason I demonstrably stated and repeatedly stated at the end of the debate on the last amendment, that I had begged the other side for language to end the submarine patent problem, if Members remember, I said over and over again, I for 2 years pleaded with the other side of this issue, give me language that will end the submarine patent problem and I will put it into my bill, just so long as we do not use this problem as an excuse to destroy the fundamental protection of our patent system which has been the guaranteed patent term.

I got nothing in return. I got no answer. To everyone I met I said, please give me the language.

The gentleman from Virginia [Mr. BOUCHER] negotiated, hopefully in good faith, for over a year trying to find language that was acceptable. There was nothing acceptable to the other side except elimination of the guaranteed patent term.

Finally the gentleman from California, TOM CAMPBELL came forward and said, let us work together and find some really tough language on the submarine patent problem and we will put it into your bill, and no one will be able to complain.

In fact, the Congressional Research Service looked at it and said, yes, the language you put in there is likely to end the submarine patent practice forever, just like H.R. 400 will. The difference between our approaches is, of course, we are not amputating the patient's leg in order to get to the hangnail. We are not destroying freedom of speech in the name of stopping a few pornographers.

If someone was up here today arguing that we have to end the first amendment to the Constitution, we have to change the Bill of Rights, because there are going to be some people that take advantage of freedom of speech, and our bill is going to have the government check all the newspapers and everything that is published beforehand to take care of these submarine free speechers, the fact is, you would say, you are crazy. You are not going to touch the Constitution in order to get the bad guys. We can find out ways of regulating them and controlling the problem.

No; instead, the other side has demanded we obliterate the protections that we have had in place since the adoption of the U.S. Constitution in order to get at the submarine patent problem. I contend that this is a fig leaf that is being used to cover the implementation of an agreement that we made with Japan 4 years ago to harmonize our law with the Japanese law. That is why there was no compromise language. That is why there was nothing they could come back to me and say that, no, we do not have to have publication to solve the submarine patent problem, we can do something else here. I was open to all those other alternatives.

No, because the purpose of the act is to put publication in our law, and the purpose of putting publication in our law is to implement a secret agreement, it was secret to me, and I was a Member of Congress, with the Japanese to harmonize our system.

Why do we want to harmonize our law with Japanese law? In Japan, which we were talking about here before, they have flooded, and that means if the little guy invents something the big guys just make little changes in what his patent is all about, because now they know all the details because it has been published, and they surround the little guy and they beat the little guy into submission and take away his rights. That is why nobody ever invents anything in Japan.

We are inviting these very same economic gangsters, economic shoguns, economic godfathers, you name them, whatever they are, the economic elite

of Japan and China and all the rest of the countries who brutalize their own people because their people do not have legal protections, we are inviting those same elitists to come over here and brutalize our people because we are stripping away their protection in the name of submarine patents.

Let me note that all the examples we have heard about submarine patents today have been examples from the 1960's and 1970's. The Patent Office in the early 1970's put in place, or late 1970's, excuse me, a system called the PALMS system. It has already taken care of the submarine patent problem. None of the examples they have given have taken place since the PALMS system was put into place.

Furthermore, our legislation, which we have been trying to offer, rather than destroying the rights of the American people, will, according to the Congressional Research Service, end the practice of submarine patenting.

Please, Mr. Chairman, I urge my colleagues, the little guy, the Roscoe Bartletts of this country, the small businessmen, our universities and research departments are begging us, please, do not publish the secret information that they have been developing before they get their patent. They know it is going to be stolen. They know they will not have the wherewithal to sue Mitsubishi Corp. or the People's Liberation Army in China that would steal their technologies.

Please oppose H.R. 400 and support the Kaptur amendment.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Illinois [Mr. HYDE], the chairman of the committee.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I think this could be boiled down very simply. We have a mind-set that thinks publication is an open door to thievery and to stealing our secrets.

There is another philosophy, it is in our Constitution. It says that if you want to get a patent, that gives you exclusive rights to your invention for a period of years, and then the tradeoff for that exclusivity is disclosure to the world, so the world may benefit from this wonderful insight that you have now patented. That is the tradeoff.

Publication is the disclosure so the world may benefit, but meanwhile, you have a period of years for which you may exploit fully your rights to the patent. That is the tradeoff. Publication is protection, because once your idea is published it is notice to the world you were there first; you have been there, you have done that, and it is yours. If anybody wishes to infringe on your rights, which are called provisional rights, not a patent yet but equivalent to a patent, they are subject to damages. So you are protected.

Meanwhile, Mr. Chairman, the foreign inventor, and 45 percent of the applications in our country, where we produce all these Nobel laureates, most of whom have an accent, not all, most, we then publish in our country, as they publish over there, so we all have that so-called level playing field.

But the most important thing I want to say, Mr. Chairman, is that we have seen that CRS report waved around as often as we have heard about hangnails or toenails. I think this argument needs a pedicure, I would say to my friend.

By the way, speaking of the amendment offered by the gentlewoman from Ohio [Ms. KAPTUR], there is an old Italian saying, you may dress the shepherd in silk, he will still smell of the goat.

Mr. Chairman, the CRS report which the gentleman so proudly has waved I would point out has been critiqued by the American Intellectual Property Law Association, which represents nearly 10,000 international intellectual property lawyers, and they say, for reasons about which we can only speculate, H.R. 811, the bill of the gentleman from California [Mr. ROHRABACHER], as reprised by the gentlewoman from Ohio, considerably strengthens the abuse potential of a submariner wishing to keep a patent application secret.

Under one section of H.R. 811, publication of a pending application could only occur if the application has been pending for more than 5 years. We can grow an awful lot of submarines under the water in 5 years.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I thank the gentleman for yielding to me. I am glad it is not goat skin, based on what has gone on here recently.

Mr. Chairman, I just wanted to say that the gentleman's explanation of how the patent system works today was just excellent.

Mr. HYDE. I thank the gentlewoman.

Ms. KAPTUR. What I wanted to ask, though, is if the proposal in H.R. 400 that the gentleman is promoting is going to be useful, currently if publication is going to be such a good idea, early publication for small inventors and small business, why have they not published under the current law, which they can do if they wish, but they do not do it?

Mr. HYDE. I would suggest to my friend that if she does not want it ever published, she wants to keep it a secret in perpetuity, do not ask for a patent. Keep it as a trade secret and get protected under the trade secrecy laws.

But if she wants a patent it has to be published. She is protected while it is published, and then the patent protects her, and then the world may benefit from her wonderful invention.

Ms. KAPTUR. Mr. Chairman, if the gentleman will continue to yield, you are protected until such time as that patent is issued, and certainly with the courts and system we have in place, after that patent is granted. What the committee is seeking to do, and why we in this amendment try to protect small business and small inventors, is lessen the time that they have that protection.

Mr. HYDE. The gentlewoman protects the submariner. She really protects and enhances the submariner.

Ms. KAPTUR. If the gentleman reads correctly what our amendment does, that is only one of five different ways in which we try to get at the submarine problem. I think the gentleman is incorrect.

□ 1645

Mr. HYDE. Mr. Chairman, that 5 years leaps out from the gentlewoman's amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I heard a statement just a few minutes ago, and I think it needs to be addressed, that there is nothing currently going on by way of the submarine patent issue, that that problem was already solved, and the like.

I had to mention, I did mention last week a letter received by Charles Trimble, President and CEO of Trimble Navigation, one of the premier firms in Silicon Valley. I just wanted to quote a couple of the things he said in his letter.

He said, From our view inside the Global Positioning System Industry, we see no harm to our industry from H.R. 400 and I support this legislation. As an inventor, I obtained basic patents, not to make money but to ensure that no one else would stop me from using my own patent or innovation in commercializing the GPS technology.

Another reason for obtaining patents is to facilitate the licensing of technology to a larger company. The real issue is not only inventing a technology but reducing it to practice, generating a commercial market and creating a legitimate business activity. This activity is a critical backbone of our economy.

He goes on to say that keeping patents unpublished or submarining until there is an emerging commercial industry that can be held hostage to costly and unnecessary lawsuits is a serious competitive threat to U.S. industries. And then, in fact, and this was dated March 11, 1997, Our industry is currently, he says, diverting significant amounts of money to combat a submarine patent that will most likely be proven not to read on our technology. This is a very sensitive issue.

He is saying that this is not a large company versus a small company issue. This is an issue about who can get hotshot patent lawyers to continue to press for money that they do not deserve, did not earn and are extorting.

Mr. FRANK of Massachusetts. Mr. Chairman, let me say, I am about to

yield to the senior ranking member, but I did want to alert Members that the vote is at 5 and the test on this for all Members will be given tomorrow morning.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, to the gentleman from California [Mr. ROHRABACHER], our distinguished colleague, it has just been discovered that there is no secret conspiracy.

Mr. CAMPBELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in order to allow the author of this amendment the chance to close. I wish to take 30 seconds before yielding the remaining amount of my time to observe that our distinguished chairman of the full committee did omit the other provision of Ms. KAPTUR's amendment. It was not simply the 5-year provision. There is also the provision that I drafted which requires publication for anyone who seeks to continue the patent application process, which is exactly the submariner.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I thank the gentleman. I wish to ask the Members to please read the substance of our amendment. The sidetracks that this debate has gone down this afternoon have amazed even me.

I wanted to state for the RECORD that there are many university scholars, inventors, lists long that have written us in support of our legislation against the base bill and, of course, many of them are in a precarious position because those universities receive funds from some of the very same interests that are promoting H.R. 400 and in many ways not being sensitive to the smaller inventors, the smaller businesses, those individual inventors that we wish to protect and give fair standing to as this measure moves forward.

Our amendment essentially would attempt to protect those inventors' patents prior to issuance. We do not want any invitation to copy, which H.R. 400 certainly promotes, because it says that within 18 months, that patent would be published even before it is granted.

Right now an individual is protected until the time that the patent is issued, until it is granted. So it is a substantial collapsing of the protection time for an individual inventor.

I find it so interesting to listen to the proponents say, well, in our system you can litigate. That is easy for a big corporation. IBM, Xerox, Ford Motor, why they are some of the best friends of this country in the jobs that they provide, and so forth. But the point is they are not the only inventors around. There are a lot of small workshops. There are a lot of professors that are out there filing. There are a lot of independent inventors who do not have the kind of financial wherewithal to function in the system that is being created here.

It is no different than the battle between the megabanks and the credit unions. It is no different than the battles that we have between the Committee on Commerce and the Committee on Small Business. It is the very same issue for small inventors, for independent inventors, and those who are not independent, who have other sources of finance to back up whatever it is they are trying to protect and advance through that Patent Office.

So our amendment essentially exempts small business under the definition of the Patent Office. It says, hey, look, give them equal footing. Do not make them play under this system, which is very difficult for the small inventor to cough up the cash for. It does not subject them to the kind of litigation that is likely to be involved here where it is more likely that their ideas and their patent will be infringed upon through the processes that are being promoted in the base bill.

Our measure also would try to acknowledge that the base bill does not distinguish between large and small inventors. So it really is an equity question for us.

We would ask Members to support the Kaptur amendment to create a level playing field, support the small business person. Support the small inventor. Support your colleges and universities. Support the little guy. Do the right thing. Make this bill better.

I know the chairman of the full committee wants to do that. I know the ranking member wants to do that. The Kaptur amendment accomplishes that.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Ohio [Ms. KAPTUR].

The question was taken; and the Chairman announced that the noes appeared to have it.

Ms. KAPTUR. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 116, further proceedings on the amendment offered by the gentlewoman from Ohio [Ms. KAPTUR] will be postponed.

Are there further amendments?

AMENDMENT OFFERED BY MR. HUNTER

Mr. HUNTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HUNTER:

Page 4, strike line 1 and all that follows through page 26, line 9 and insert the following:

TITLE I—PATENT AND TRADEMARK SYSTEM REVISIONS

SEC. 101. SECURE PATENT EXAMINATION.

Section 3 of title 35, United States Code, is amended by adding at the end the following:

''(f) All examination and search duties for the grant of United States letters patent are sovereign functions which shall be performed within the United States by United States citizens who are employees of the United States Government.''.

SEC. 102. PATENT AND TRADEMARK EXAMINER TRAINING.

(a) IN GENERAL.—Chapter 1 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 15. Patent and trademark examiner training

IN GENERAL.—All patent examiners and trademark examiners shall spend at least 5 percent of their duty time per annum in training to maintain and develop the legal and technological skills useful for patent or trademark examination, as the case may be.

''(b) TRAINERS OF EXAMINERS.—The Patent and Trademark Office shall develop an incentive program to retain as employees patent examiners and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent examiners and trademark examiners who have not achieved the grade of primary examiner.''.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 1 of title 35, United States Code, is amended by adding at the end the following:

''15. Patent and trademark examiner training.''.

SEC. 103. LIMITATIONS ON PERSONNEL.

Section 3(a) of title 35, United States Code, is amended by adding at the end the following: ''The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation.''.

Page 26, line 10, strike ''121'' and insert ''104''.

Page 28, line 15, strike ''122'' and insert ''105''.

Page 30, strike line 3 and all that follows through page 46, line 23, and insert the following:

SEC. 106. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect 30 days after the date of the enactment of this Act.

Amend the table of contents accordingly.

Mr. HUNTER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUNTER. Mr. Chairman, this has been a good debate, a robust debate on the patent system and whether or not we need to radically change the system. I am offering this amendment to move over to the personnel side of the issue and talk about it a little bit.

I want you to consider that the proposal, the idea that property rights are extremely precious in the United States and that if you ask the average citizen what his most important right is, he would probably say it is my right to own my house, my farm, my property, and to have a system that ensures that ownership.

Now, we often have disputes over property rights in the United States. We have quiet title actions and other types of actions, when you go to court because somebody else or the government disputes your claimed absolute ownership of your property. And what Americans want when their property rights are in dispute is an excellent judiciary with absolute integrity. They

do not want to have a judiciary that is contracted out. We went over and had a rent-a-judge program. They do not want to have a judiciary where you may go to a foreign country and contract or exchange judges with them, especially if it is an issue where their ownership of your property may be a part of the particular issue. We want to have judges that are absolutely insulated from politics.

Now, I think we need exactly the same thing when we are talking about intellectual property. We have had a Patent Office, I understand, I have done a little investigation, we have not had a scandal regarding undue influence in the Patent Office for 160 years. What does that say about our patent examiners, those Federal employees who work in the Patent Office and basically make decisions that are life or death for American citizens, for inventors, for small businesses, for big businesses?

Those people in practical terms award property rights or refuse to award property rights. They are quasi-judges. They are a lot like the judges who make determinations on real property rights, who make the decision as to whether or not you own your house or you own that strip of land that your neighbor may contest.

Well, I have offered an amendment that does several things. It says essentially that patent applications, it ensures that patent applications will be reviewed by politically insulated, competent, and plentiful patent examiners. Let us go through that.

First, I think the important idea is to have political insulation to make sure that you have an absolutely pristine patent examiner corps and you do that by making sure that they are U.S. citizens and that they are Federal employees. You do not want to contract out judges. These folks are quasi-judges.

Second, it ensures that you are going to have good patent examiners. It says that over 5 percent of their duty time must be spent in training. We have a lot of very high technology creativity now that is being pushed through the Patent Office by American innovators. We need to have folks that are up to speed and can apply technical expertise that will allow them to make an efficient review of that patent application. So my bill or my amendment offers a requirement for 5 percent of your duty time being spent in training.

Last, it ensures that you are going to have swift patent issuance, that has been an issue today, and office flexibility by lifting a mandated full-time employee cap from the Patent and Trademark Office.

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). The time of the gentleman from California [Mr. HUNTER] has expired.

Mr. HUNTER. Mr. Chairman, I ask unanimous consent to proceed for 1 additional minute.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

Mr. CONYERS. Mr. Chairman, I object.

The CHAIRMAN pro tempore. Objection is heard.

Mr. CONYERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I just want to explain to the gentleman from California, [Mr. HUNTER] that he has had 5 minutes. I get 3. I am not giving him any more time. I am not yielding.

Mr. Chairman, I object to this amendment. This amendment contains a number of restrictions on how the tradeoffs can operate, including the types of search files the office should use, the amount of training examiners should receive, where and by whom the patent application should be examined. It imposes restraints on executive branch negotiations with other nations on patent law.

Is this serious? We are going to, in an amendment that all debate concludes on in 8 minutes, we are now going to limit the executive branch of Government's ability to negotiate with other nations on patent law.

This would eliminate the operational flexibilities and management stability of the Government corporation which would be created in H.R. 400. I guess that means it guts the bill.

So here we go. We have had about 4 amendments. I am not impatient with this mode of debate and the secret agreements that nobody knows about, the conspiracy that is motivating the movers of H.R. 400. But it is a little trying.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, in my reading of the amendment, I believe it is very clear from the plain words of the amendment that the Patent and Trademark Office current search files would need to be maintained. I think what this means, in a practical manner, is that the current 33 million documents search files that are on paper would need to be maintained forever.

I think, although I presume not intended, that would be a very serious problem for our country when we think about what we can accomplish with computerization, especially dealing with massive amounts of data. So I think that that unintended consequence, if for no other reason, should lead us all to oppose this amendment. I do not know whether the chairman of the subcommittee wished to be recognized for the remainder of my time.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California.

□ 1700

Mr. CAMPBELL. Mr. Chairman, I appreciate the gentleman yielding, and it is for this purpose. If I could have the attention of the gentleman from Michigan.

Mr. Chairman, I am asking for unanimous consent that 2½ additional minutes be given to the gentleman from Michigan [Mr. CONYERS] and 2½ additional minutes be given to the gentleman from California [Mr. HUNTER].

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). Is there objection to the request of the gentleman from California?

Mr. CONYERS. Mr. Chairman, I object.

The CHAIRMAN pro tempore. Objection is heard. All time has expired.

The question is on the amendment offered by the gentleman from California [Mr. HUNTER].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. HUNTER. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 116, further proceedings on the amendment offered by the gentleman from California [Mr. HUNTER] will be postponed.

Mr. BARCIA. Mr. Chairman, we have listened to members of this house eloquently debate both sides of this issue today and it is apparent that almost all agree that there are problems with our current patent system. However, we do not agree on how we can correct the problems.

There are several points on which we all agree and I believe that we can and should work on perfecting those provisions to improve, not massively alter, our patent system. We agree that we need to prevent submarine patents.

We agree on provisional royalty rights for those who are published. Those changes can be made without hurting independent inventors who have been the backbone of this country for 200 years.

We do not need to make massive changes to a system that we can fix. Let's address those provisions on which we agree and pass a bill that ends abuse of the system. Let us also continue to provide the independent inventor the opportunity and financial ability to pursue innovative ideas and inventions.

Some of my colleagues have suggested, quite correctly, that even under the current system lawsuits and piracy are possible, even prominent. However, this is not an excuse for opening our inventors to more of the same. Compounding injustice will not make our Nation better.

Innovation is the cornerstone and strength of our country and we are all committed to protecting the intellectual property rights of inventors and researchers. We all want to prevent abuses by those who would purposely delay applications or use other tactics to artificially extend patent protection.

However, I am opposed to H.R. 400 and any other legislation that would allow infringement on intellectual property rights guaranteed by our Constitution.

Mrs. MINK of Hawaii. Mr. Speaker, I rise today to stand up for our Nations small businesses and individual investors. With all the data on the obstacles small businesses face in our increasingly globally-oriented marketplace, I am quite dismayed about the changes advocated by this bill. While supporters claim this

bill helps businesses and inventors, closer examination proves otherwise. Rather than assisting all businesses and inventors, this bill allows large corporations and foreign entities to gain an advantage over America's small businesses and individual inventors.

Proponents of this legislation claim that this bill benefits investors and the American society as a whole. They contend that by publishing patents in a shorter amount of time, businesses and the government will be able to save money from eliminating duplicative research. In addition, supporters claim by disclosing the patent information in 18 months inventors are compensated for royalties earlier in the patent process. Existing law provides that a patent applicant must remain confidential until the patent is granted. Do we really want to disclose information to our competitors just to harmonize our patent laws with international standards?

Instead of maintaining a system that has been independent and encourages American ingenuity for over 200 years, H.R. 400 restructures the U.S. Patent & Trademark Office [PTO] by creating a Management Advisory Board that reviews the policies, goals, performance, budget and user fees of the PTO. This bill will subject the PTO to the appropriations process, as well as, Congressional oversight. Mr. Speaker we have already seen how special interests in the political process can influence the system. This bill not only adds additional redtape, but more significantly, it allows politics to influence the issuance of a patent. The existing structure already provides applicants the objectivity and assurance that they will be given a fair opportunity to obtain patents and safeguards intellectual property rights.

During this debate we will be hearing a lot about ''submarine patents.'' Proponents of H.R. 400 allege that numerous patent applicants purposely delay their patent to keep their inventions secret. If submarine patents are as secretive as critics claim, then how are we to know the real number of submarine patents that exists? Are submarine patents really a problem or is it just a smokescreen to dismantle a system that protects the rights of the little guy?

Another change H.R. 400 seeks is to allow third parties to participate in the reexamination process. Under existing law, validity of issued patents are challenged and reexamined only by the U.S. Patent & Trademark Office. This bill will allow larger corporations and wealthier entities to challenge the validity of a patent. As these challenges or suits drag on for longer periods, the smaller and less affluent businesses or individuals are the ones most negatively affected. Once their finances are depleted, the ''deep pockets'' are likely to acquire rights to these patents.

H.R. 400 will hurt our small businesses and inventors. It should not pass.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to House Resolution 116, proceedings will now resume on those amendments on which further proceedings were postponed in the following order:

Amendment No. 1, offered by the gentleman from California [Mr. CAMPBELL];

Amendment No. 2, offered by the gentleman from California [Mr. CAMPBELL];

Amendment offered by the gentlewoman from Ohio [Ms. KAPTUR];

And the amendment offered by the gentleman from California [Mr. HUNTER].

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

PARLIAMENTARY INQUIRIES

Mr. CAMPBELL. Mr. Chairman, is it my understanding that we will go to a recorded vote or must I make a point of order about the absence of a quorum?

The CHAIRMAN pro tempore. The Chair will clarify.

Ms. LOFGREN. Mr. Chairman, parliamentary inquiry. Is it my understanding that the first recorded vote is on the Campbell 1 amendment, to be followed by 5 minute votes on Campbell 2, the Kaptur amendment and the like? I could not hear.

The CHAIRMAN pro tempore. The gentlewoman is correct.

AMENDMENT NO. 1 OFFERED BY MR. CAMPBELL

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment No. 1, offered by the gentleman from California [Mr. CAMPBELL] on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 185, noes 224, not voting 24, as follows:

[Roll No. 86]

AYES—185

Abercrombie
Bachus
Baker
Baldacci
Barcia
Barr
Barrett (WI)
Bartlett
Bass
Bereuter
Bilbray
Bilirakis
Blumenauer
Bonilla
Bonior
Bono
Brown (FL)
Brown (OH)
Calvert
Camp
Campbell
Chenoweth
Christensen
Clayton
Clement
Coburn
Combest
Condit
Cook
Cooksey
Costello
Cox
Coyne
Crapo
Cunningham
Danner
Davis (VA)
DeFazio
Dellums
Dixon
Doolittle
Doyle
Duncan
Ehlers
Emerson
Engel
Ensign
Everett
Filner
Foley
Forbes
Fowler
Frank (MA)
Gallegly
Gephardt
Gibbons
Gillmor
Goode
Gordon
Goss
Graham
Green
Gutierrez
Hansen
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoyer
Hulshof
Hunter
Istook
Jackson-Lee (TX)
Johnson, E. B.
Jones
Kanjorski
Kaptur
Kennedy (MA)
Kildee
Kim
King (NY)
Kleczka
Klink
Klug
Kucinich
LaHood
Largent
LaTourette
Leach
Lewis (KY)
Lipinski
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
Martinez
Mascara
McCarthy (NY)
McCollum
McDade
McGovern
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Menendez
Metcalf
Mica
Miller (FL)
Mink
Molinari
Moran (KS)
Murtha
Myrick
Neumann
Ney
Norwood
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pappas
Parker
Pascrell
Paul
Petri
Pickering
Pombo
Pomeroy
Porter
Poshard
Radanovich
Rangel
Regula
Riley
Rivers
Rohrabacher
Ros-Lehtinen
Roybal-Allard
Royce
Ryun
Salmon
Sanchez
Sanders
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Shadegg
Smith (MI)
Smith (NJ)
Smith, Linda
Snowbarger
Solomon
Stark
Stearns
Strickland
Stump
Stupak
Talent
Tauscher
Thornberry
Thune
Thurman
Tiahrt
Traficant
Upton
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Weldon (FL)
Weygand
Wolf

NOES—224

Ackerman
Aderholt
Allen
Archer
Armey
Baesler
Barrett (NE)
Barton
Bateman
Becerra
Bentsen
Berman
Berry
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Borski
Boswell
Boucher
Boyd
Brady
Brown (CA)
Bunning
Burr
Burton
Buyer
Callahan
Canady
Cannon
Capps
Cardin
Carson
Castle
Chabot
Chambliss
Clay
Clyburn
Coble
Conyers
Cramer
Crane
Davis (FL)
Davis (IL)
Deal
DeGette
Delahunt
DeLauro
DeLay
Dickey
Dicks
Dingell
Doggett
Dooley
Dreier
Dunn
Edwards
Ehrlich
English
Eshoo
Etheridge
Evans
Ewing
Farr
Fattah
Fawell
Fazio
Flake
Foglietta
Ford
Fox
Franks (NJ)
Frelinghuysen
Frost
Ganske
Gejdenson
Gekas
Gilchrest
Gilman
Gonzalez
Goodlatte
Goodling
Granger
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Harman
Hastert
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Horn
Hostettler
Houghton
Hutchinson
Hyde
Jackson (IL)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, Sam
Kasich
Kelly
Kennedy (RI)
Kennelly
Kind (WI)
Knollenberg
Kolbe
LaFalce
Lampson
Lantos
Latham
Lazio
Levin
Lewis (CA)
Lewis (GA)
Linder
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Matsui
McCarthy (MO)
McCrery
McDermott
McHale
Meehan
Meek
Millender-McDonald
Miller (CA)
Minge
Moakley
Mollohan
Moran (VA)
Morella
Nadler
Neal
Nethercutt
Northup
Nussle
Oxley
Packard
Pastor
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Pickett
Pitts
Portman
Price (NC)
Pryce (OH)
Quinn
Ramstad
Reyes
Riggs
Rodriguez
Roemer
Rogan
Rogers
Rothman
Roukema
Sabo
Sandlin
Sawyer
Schumer
Scott
Sensenbrenner
Serrano
Sessions
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (TX)
Smith, Adam
Snyder
Souder
Spence
Spratt
Stabenow
Stenholm
Stokes
Sununu
Tanner
Tauzin
Thomas
Thompson
Tierney
Torres
Turner
Vento
Visclosky
Waxman
Weldon (PA)
Weller
Wexler
White

Whitfield
Wicker
Woolsey
Wynn
Young (AK)
Young (FL)

NOT VOTING—24

Andrews
Ballenger
Bryant
Collins
Cubin
Cummings
Deutsch
Diaz-Balart
Furse
Hoekstra
Inglis
Kilpatrick
Kingston
Rahall
Rush
Sanford
Schiff
Smith (OR)
Taylor (MS)
Taylor (NC)
Towns
Velazquez
Wise
Yates

□ 1725

The Clerk announced the following pairs:

On this vote:

Mrs. Cubin for, with Mr. Kingston against.

Mr. Sanford for, with Mr. Smith of Oregon against.

Mr. Deutsch for, with Mr. Towns against.

Messrs. DELAY, HASTERT, WELLER, and GONZALEZ changed their vote from ''aye'' to ''no.''

Messrs. POMBO, CAMP, RYUN, WATTS of Oklahoma, KIM, MCGOVERN, Mrs. CLAYTON, and Ms. ROYBAL-ALLARD changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). Pursuant to the rule, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each additional amendment on which the Chair has postponed further proceedings.

AMENDMENT NO. 2 OFFERED BY MR. CAMPBELL

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California [Mr. CAMPBELL] on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 167, noes 242, not voting 24, as follows:

[Roll No. 87]

AYES—167

Abercrombie
Archer
Bachus
Baker
Baldacci
Barcia
Barr
Barrett (WI)
Bartlett
Bass
Bereuter
Bilirakis
Bonilla
Bonior
Bono
Brown (OH)
Calvert
Campbell
Cardin
Chenoweth
Christensen
Clayton
Clement
Coburn
Combest
Condit
Cook
Cooksey
Costello
Cox
Crapo
Cunningham
Danner
Deal
DeFazio
DeLay
Dellums
Dixon
Doolittle
Doyle
Duncan
Emerson
English
Ensign
Everett
Ewing
Filner
Foley
Forbes
Gallegly
Gephardt
Gibbons
Goode
Goss
Graham
Green
Gutierrez
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Holden
Hoyer
Hulshof
Hunter
Hutchinson
Istook
Jones
Kanjorski
Kaptur
Kildee
King (NY)
Kleczka
Klink
Kucinich
LaHood
Largent
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lipinski
Livingston
LoBiondo
Lucas
Manzullo
Martinez
Mascara
McCarthy (NY)
McCrery
McDade
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Metcalf
Mica
Miller (FL)
Mink
Molinari
Moran (KS)
Myrick
Neumann
Ney
Norwood
Oberstar
Obey
Olver
Ortiz
Pallone
Pappas
Parker
Pascrell
Paul
Petri
Pickering
Pombo
Poshard
Regula
Riggs
Riley
Rivers
Rohrabacher
Ros-Lehtinen
Royce
Ryun
Salmon
Sanders
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Smith (MI)
Smith (NJ)
Smith, Linda
Snowbarger
Solomon
Stark
Strickland
Stump
Stupak
Sununu
Talent
Thornberry
Thune
Thurman
Tiahrt
Traficant
Walsh
Wamp
Waters
Watt (NC)
Watts (OK)
Weldon (FL)
Weller
Whitfield

NOES—242

Ackerman
Aderholt
Allen
Armey
Baesler
Barrett (NE)
Barton
Bateman
Becerra
Bentsen
Berman
Berry
Bilbray
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Borski
Boswell
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Bunning
Burr
Burton
Buyer
Callahan
Camp
Canady
Cannon
Capps
Carson
Castle
Chabot
Chambliss
Clay
Clyburn
Coble
Conyers
Coyne
Cramer
Crane
Cummings
Davis (FL)
Davis (IL)
Davis (VA)
DeGette
Delahunt
DeLauro
Dickey
Dicks
Dingell
Doggett
Dooley
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Fawell
Fazio
Flake
Foglietta
Ford
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Ganske
Gejdenson
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Granger
Greenwood
Gutknecht
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Hooley
Horn
Hostettler
Houghton
Hyde
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kim
Kind (WI)
Klug
Knollenberg
Kolbe
LaFalce
Lampson
Lantos
Latham
Levin
Lewis (GA)
Linder
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
McHale
McIntosh
Meehan
Meek
Menendez
Millender-McDonald
Miller (CA)
Minge
Moakley
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Neal
Nethercutt
Northup
Nussle
Owens
Oxley
Packard
Pastor
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Pickett
Pitts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Ramstad
Rangel
Reyes
Rodriguez
Roemer
Rogan
Rogers
Rothman
Roukema
Roybal-Allard
Sabo
Sanchez
Sandlin
Sawyer
Schumer
Scott
Serrano
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (TX)
Smith, Adam
Snyder
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Stokes
Tanner
Tauscher
Tauzin
Thomas
Thompson
Tierney
Torres
Turner
Upton
Vento
Visclosky
Watkins
Waxman
Weldon (PA)
Wexler
Weygand
White
Wicker
Wolf
Woolsey
Wynn
Young (AK)
Young (FL)

NOT VOTING—24

Andrews
Ballenger
Bryant
Collins
Cubin
Deutsch
Diaz-Balart
Furse
Gekas
Hoekstra
Inglis
Kilpatrick
Kingston
Rahall
Rush
Sanford
Schiff
Smith (OR)
Taylor (MS)
Taylor (NC)
Towns
Velazquez
Wise
Yates

□ 1736

The Clerk announced the following pair:

On this vote:

Mr. Sanford for, with Mr. Smith of Oregon against.

Ms. PELOSI changed her vote from ''aye'' to ''no.''

Mr. MCCRERY changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MS. KAPTUR

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from Ohio [Ms. KAPTUR] on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 220, noes 193, not voting 20, as follows:

[Roll No. 88]

AYES—220

Abercrombie
Aderholt
Archer
Bachus
Baker
Baldacci
Barcia
Barr
Barrett (WI)
Bartlett
Bereuter
Bilbray
Bilirakis
Bishop
Bonilla
Bonior
Bono
Boyd
Brady
Brown (FL)
Brown (OH)
Calvert
Campbell
Cardin
Chenoweth
Christensen
Clay
Clayton
Clyburn
Coburn
Collins
Combest
Condit
Cook
Costello
Cox
Cramer
Crapo
Danner
Deal
DeFazio
DeLauro
DeLay
Dellums
Dickey

Dixon
Doolittle
Doyle
Duncan
Emerson
English
Ensign
Everett
Ewing
Fattah
Filner
Foley
Forbes
Fowler
Fox
Franks (NJ)
Gallegly
Gejdenson
Gephardt
Gillmor
Goode
Gordon
Goss
Graham
Green
Gutierrez
Hall (OH)
Hall (TX)
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Holden
Hostettler
Hoyer
Hulshof
Hunter
Hutchinson
Istook
Jackson-Lee (TX)
Jefferson
Jones
Kanjorski
Kaptur
Kildee
Kim
King (NY)
Kleczka
Klink
Kucinich
LaHood
Largent
LaTourette
Lazio
Leach
Levin
Lewis (KY)
Lipinski
Livingston
LoBiondo
Lucas
Manzullo
Martinez
Mascara
McCarthy (NY)
McCrery
McDade
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meek
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Mink
Molinari
Moran (KS)
Moran (VA)
Murtha
Myrick
Nethercutt
Neumann
Ney
Norwood
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pappas
Parker
Pascrell
Paul
Payne
Pelosi
Peterson (PA)
Petri
Pickering
Pombo
Pomeroy
Porter
Poshard
Radanovich
Rahall
Rangel
Regula
Riggs
Riley
Rivers
Rodriguez
Rohrabacher
Ros-Lehtinen
Royce
Ryun
Salmon
Sanders
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Shadegg
Smith (MI)
Smith (NJ)
Smith, Linda
Snowbarger
Solomon
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Talent
Tauzin
Thompson
Thornberry
Thune
Tiahrt
Torres
Traficant
Upton
Walsh
Wamp
Waters
Watt (NC)
Watts (OK)
Weldon (PA)
Weller
Weygand
Whitfield
Wicker
Woolsey
Wynn
Young (AK)

NOES—193

Ackerman
Allen
Armey
Baesler
Barrett (NE)
Barton
Bass
Bateman
Becerra
Bentsen
Berman
Berry
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Borski
Boswell
Boucher
Brown (CA)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Camp
Canady
Cannon
Capps
Carson
Castle
Chabot
Chambliss
Clement
Coble
Conyers
Cooksey
Coyne
Crane
Cummings
Cunningham
Davis (FL)
Davis (IL)
Davis (VA)
DeGette
Delahunt
Dicks
Dingell
Doggett
Dooley
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Engel
Eshoo
Etheridge
Evans
Farr
Fawell
Fazio
Flake
Foglietta
Ford
Frank (MA)
Frelinghuysen
Frost
Ganske
Gekas
Gibbons
Gilchrest
Gilman
Gonzalez
Goodlatte
Goodling
Granger
Greenwood
Gutknecht
Hamilton
Hastings (FL)
Hefner
Hinchey
Hinojosa
Hobson
Hooley
Horn
Houghton
Hyde
Jackson (IL)
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kind (WI)
Klug
Knollenberg
Kolbe
LaFalce
Lampson
Lantos
Latham
Lewis (CA)
Lewis (GA)
Linder
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Matsui
McCarthy (MO)
McCollum
McDermott
Meehan
Minge
Moakley
Mollohan
Morella
Nadler
Neal
Northup
Nussle
Oxley
Packard
Pastor
Paxon
Pease
Peterson (MN)
Pickett
Pitts
Portman
Price (NC)
Pryce (OH)
Quinn
Ramstad
Reyes
Roemer
Rogan
Rogers
Rothman
Roukema
Roybal-Allard
Sabo
Sanchez
Sandlin
Sawyer
Schumer
Scott
Serrano
Sessions
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (TX)
Smith, Adam
Snyder
Souder
Stokes
Tanner
Tauscher
Thomas
Thurman
Tierney
Turner
Vento
Visclosky
Watkins
Waxman
Weldon (FL)
Wexler
White
Wolf
Young (FL)

NOT VOTING—20

Andrews
Ballenger
Cubin
Deutsch
Diaz-Balart
Furse
Hoekstra
Inglis
Kilpatrick
Kingston
Rush
Sanford
Schiff
Smith (OR)
Taylor (MS)
Taylor (NC)
Towns
Velazquez
Wise
Yates

□ 1748

The Clerk announced the following pairs:

On this vote:

Ms. Velázquez for, with Mr. Deutsch against.

Mrs. Cubin for, with Mr. Kingston against.

Mr. Sanford for, with Mr. Smith of Oregon against.

Mr. HOBSON, Mr. LAFALCE, and Ms. SLAUGHTER changed their vote from ''aye'' to ''no.''

Messrs. RAHALL, BRADY, McGOVERN, and FOX of Pennsylvania changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. WELDON of Florida. Mr. Chairman, during the vote on the Kaptur amendment my vote should have been recorded as a ''yea'' vote for the amendment. My vote was inadvertently recorded as a ''no'' vote and I would like for the RECORD to show that I was in favor of the Kaptur amendment. This amendment will provide small businesses and inventors with the protections that they need and deserve.

AMENDMENT OFFERED BY MR. HUNTER

The CHAIRMAN pro tempore (Mr. BARRETT of Nebraska). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California [Mr. HUNTER] on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 133, noes 280, not voting 20, as follows:

[Roll No. 89]

AYES—133

Abercrombie
Bachus
Baker
Baldacci
Barcia
Barr
Bartlett
Bilbray
Bilirakis
Bonior
Bono
Brown (OH)
Burton
Calvert
Campbell
Chenoweth
Clement
Coburn
Combest
Condit
Crapo
Danner
DeFazio
Doolittle
Doyle
Emerson
English
Ensign
Everett
Ewing
Filner
Foley
Forbes
Gallegly
Gephardt
Gibbons
Goode
Goodling
Goss
Graham
Gutierrez
Hall (TX)
Hansen
Hayworth
Hefley
Herger
Hill
Holden
Hostettler
Hoyer
Hulshof
Hunter
Istook
Jackson-Lee (TX)
Jones
Kanjorski
Kaptur
Kildee
King (NY)
Kleczka
Klink
Kucinich
Largent
LaTourette
Lewis (KY)
Lipinski
LoBiondo
Lucas
Manzullo
Martinez
Mascara
McCarthy (NY)
McHale
McHugh
McInnis
McKeon
McKinney
McNulty
Metcalf
Mica
Miller (CA)
Mink
Moran (KS)
Moran (VA)
Myrick
Neumann
Ney
Norwood
Oberstar
Obey
Olver
Ortiz
Pallone
Pappas
Pascrell
Petri
Pombo
Pomeroy
Radanovich
Rahall
Regula
Riley
Rivers
Rohrabacher
Ros-Lehtinen
Royce
Ryun
Salmon
Sanders
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sessions
Skelton
Smith (NJ)
Smith, Linda
Snowbarger
Solomon
Spence
Stark
Stump
Talent
Tiahrt
Traficant
Walsh
Wamp
Waters
Watts (OK)
Weldon (FL)
Weller
Whitfield
Young (AK)

NOES—280

Ackerman
Aderholt
Allen
Archer
Armey
Baesler
Barrett (NE)
Barrett (WI)
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Berman
Berry
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Borski
Boswell
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Bryant
Bunning
Burr
Buyer
Callahan
Camp
Canady
Cannon
Capps
Cardin
Carson
Castle
Chabot
Chambliss
Christensen
Clay
Clayton
Clyburn
Coble
Collins
Conyers
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Cummings
Cunningham
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeGette
Delahunt
DeLauro
DeLay
Dellums
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Fawell
Fazio
Flake
Foglietta
Ford
Fowler
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Ganske
Gejdenson
Gekas
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Gordon
Granger
Green
Greenwood
Gutknecht
Hall (OH)
Hamilton
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hefner
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hooley
Horn
Houghton
Hutchinson
Hyde
Jackson (IL)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E.B.
Johnson, Sam
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kim
Kind (WI)
Klug
Knollenberg
Kolbe

LaFalce
LaHood
Lampson
Lantos
Latham
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Linder
Livingston
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Matsui
McCarthy (MO)
McCollum
McCrery
McDade
McDermott
McGovern
McIntosh
McIntyre
Meehan
Meek
Menendez
Millender-McDonald
Miller (FL)
Minge
Moakley
Molinari
Mollohan
Morella
Murtha
Nadler
Neal
Nethercutt
Northup
Nussle
Owens
Oxley
Packard
Parker
Pastor
Paul
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Pickering
Pickett
Pitts
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Ramstad
Rangel
Reyes
Riggs
Rodriguez
Roemer
Rogan
Rogers
Rothman
Roukema
Roybal-Allard
Sabo
Sanchez
Sandlin
Sawyer
Schumer
Scott
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Slaughter
Smith (MI)
Smith (TX)
Smith, Adam
Snyder
Souder
Spratt
Stabenow
Stearns
Stenholm
Stokes
Strickland
Stupak
Sununu
Tanner
Tauscher
Tauzin
Thomas
Thompson
Thornberry
Thune
Thurman
Tierney
Torres
Turner
Upton
Vento
Visclosky
Watkins
Watt (NC)
Waxman
Weldon (PA)
Wexler
Weygand
White
Wicker
Wolf
Woolsey
Wynn
Young (FL)

NOT VOTING—20

Andrews
Ballenger
Cubin
Deutsch
Diaz-Balart
Furse
Hoekstra
Inglis
Kilpatrick
Kingston
Rush
Sanford
Schiff
Smith (OR)
Taylor (MS)
Taylor (NC)
Towns
Velazquez
Wise
Yates

☐ 1757

The Clerk announced the following pair: On this vote:

Mrs. Cubin for, with Mr. Kingston against.

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore. Are there other amendments?

If not, the question is on the committee amendment in the nature of a substitute as modified, as amended.

The committee amendment in the nature of a substitute as modified, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

☐ 1800

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. KOLBE), having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 400) to amend title 35, United States Code, with respect to patents, and for other purposes, pursuant to House Resolution 116, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. SMITH of Oregon. Mr. Speaker, unfortunately, I was unable to be present during consideration of H.R. 400 today. As a cosponsor of this bill, however, I feel it is important for me to let my intentions be known on this important matter. Therefore, I would like to state for the RECORD that, had I been present, I would have voted against all of the amendment to H.R. 400 and supported final passage of the bill.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 400, 21ST CENTURY PATENT SYSTEM IMPROVEMENT ACT

Mr. COBLE. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 400, the Clerk be authorized to correct section numbers, punctuation, and cross-references, and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

GENERAL LEAVE

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 400.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

WITHDRAWAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1062

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that my name be withdrawn as a cosponsor of H.R. 1062.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Thursday, April 24, 1997.

EXPRESSING THE SENSE OF CONGRESS WITH RESPECT TO SIGNIFICANCE OF MAINTAINING HEALTH AND STABILITY OF CORAL REEF ECOSYSTEMS

Mr. SAXTON. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H.Con. Res. 8) expressing the sense of Congress with respect to the significance of maintaining the health and stability of coral reef ecosystems, as amended.

The Clerk read as follows:

H. CON. RES. 8

Whereas coral reefs are among the world's most biologically diverse and productive marine habitats, and are often described as the tropical rain forests of the oceans;

Whereas healthy coral reefs provide the basis for subsistence, commercial fisheries, and coastal and marine tourism and are of vital economic importance to coastal States and territories of the United States including Florida, Hawaii, Georgia, Texas, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

Whereas healthy coral reefs function as natural, regenerating coastal barriers, protecting shorelines and coastal areas from high waves, storm surges, and accompanying losses of human life and property;

Whereas the scientific community has long established that coral reefs are subject to a wide range of natural and anthropogenic threats;

Whereas the United States has taken measures to protect national coral reef resources through the designation and management of several marine protected areas, containing reefs of the Flower Garden Banks in the Gulf of Mexico, the Florida Keys in south Florida, and offshore Hawaii, Puerto Rico, the Virgin Islands, and American Samoa;

Whereas the United States, acting through its agencies, has established itself as a global leader in coral reef stewardship by launching the International Coral Reef Initiative and by maintaining professional networks for the purposes of sharing knowledge and information on coral reefs, furnishing near real-time data collected at coral reef sites, providing a repository for historical data relating to coral reefs, and making substantial contributions to the general fund of coral reef knowledge; and

Whereas 1997 has been declared the ''International Year of the Reef'' by the coral reef research community and over 40 national and international scientific, conservation, and academic organizations: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress recognizes the significance of maintaining the health and stability of coral reef ecosystems, by—

(1) promoting comprehensive stewardship for coral reef ecosystems;

(2) encouraging research, monitoring, and assessment of and education on coral reef ecosystems; and

(3) improving the coordination of coral reef efforts and activities of Federal agencies, academic institutions, nongovernmental organizations, and industry.